



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

Appeal Number: PA/02444/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12th September 2018**

**Decision & Reasons
Promulgated
On 5th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR MOHAMED SULTAN ABDI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzsimmons, Counsel
For the Respondent: Ms Wilcox-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Somalia born on 13th January 1989. The Appellant has had an extremely extensive immigration history. It is set out at paragraph 1 of the First-tier Tribunal Judge's decision. In a Notice of

Refusal dated 4th March 2016 the Secretary of State accepted that the Appellant was from Somalia and stated that the objective evidence showed that the Biyomaal clan belonged to the Dir group, a majority clan in Somalia. The Appellant fears that he would suffer persecution from the majority Hawiye clan as they attacked him in 2009 and also fear from persecution from Al Shabab who attacked him in 2013 and 2015. Further, he claims that he no longer has any family members left in Somalia and will have no family support there including in Mogadishu.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Roopnarine-Davies on 15th August 2016. In a decision and promulgation dated 26th August 2016 the Appellant's appeal was dismissed. Following the lodging of Grounds of Appeal permission was eventually granted by Upper Tribunal Judge Coker in October 2016 to appeal to the Upper Tribunal. In an error of law decision dated 9th January 2017 Upper Tribunal Judge Craig remitted the hearing back to the First-tier Tribunal. That hearing came before Immigration Judge Beg sitting at Taylor House on 25th September 2017. Again, the Appellant's appeal was dismissed on all grounds, on this occasion in a promulgation dated 4th October 2017.
3. Fresh Grounds of Appeal were lodged to the Upper Tribunal on 18th October 2017. Those grounds contended:-
 - (i) that the Immigration Judge had failed to provide reasons for making flawed credibility findings regarding the Appellant's exit from Somalia;
 - (ii) had made a flawed treatment and analysis of the Appellant's screening interview;
 - (iii) had made flawed credibility findings regarding the Appellant's wife;
 - (iv) had made flawed findings in respect of internal relocation.
4. Permission to appeal was refused by Immigration Judge Saffer on 22nd November 2017. The Grounds of Appeal were renewed on 22nd February 2018 and on 10th May 2018 Upper Tribunal Judge Jackson granted permission to appeal, concluding that all grounds at least cumulatively may be arguable and affect the outcome of the appeal and that in particular there are repeated statements of adverse credibility findings, the reasons for which are arguably not entirely clear even within the context of the paragraph in which they appear.
5. It is on that basis that the appeal comes before me to determine whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Ms Fitzsimmons. Ms Fitzsimmons is extremely familiar with this matter. The Secretary of State appears by her Home Office Presenting Officer, Ms Wilcox-Briscoe.

Submissions/Discussion

6. Ms Fitzsimmons narrows the issues by pointing out that it has been accepted that the Appellant has been subjected to persecution and that the key issue is whether or not the Appellant can relocate to Mogadishu. She points out that the First-tier Tribunal Judge contends that the Appellant would have a support network. She submits that the argument is one of consideration of the judge's reasoning.
7. Ms Fitzsimmons turns to the grounds, noting that at paragraphs 26 and 27 Judge Beg in her decision rejected the Appellant's account as to why his family sent him to the UK. She points out that the judge earlier on in her analysis states that she does not "find the Appellant's explanations" credible but does not give reasons why his explanations were not credible. She further continues that the fact that he was under the control of an agent is not credible but again does not provide reasons as to why specifically it is incredible. She submits there is nothing inherently implausible in the Appellant's account that essentially, his exit was prioritised because of his risk profile. She submits that as he left using an agent it is highly plausible that he would have been targeted.
8. Secondly, she turns to the contention that the judge's adverse credibility findings at paragraphs 28 and 32 are flawed for reasons of her treatment of the Appellant's attempt to correct inconsistencies said to arise from his screening interview. She contends that the judge failed to take into account the decision of the Court of Appeal in *JA (Afghanistan) v SSHD [2014] EWCA Civ 450* in which it was held that the common law principle of fairness required careful consideration of the extent to which reliance can properly be placed on answers purportedly given by claimants in screening interviews. She submits that the Appellant puts his explanation of what is disputed to the judge but she ignores his case about the screening interview being a fair record.
9. Thirdly, she contends that the judge made flawed credibility findings regarding the Appellant's wife in rejecting his account as to how he became separated from her before he left Somalia submitting that the judge fell foul of the principle in *HK (Sierra Leone) v SSHD [2006] EWCA Civ 1037*, namely that decision makers should guard against finding an account to be incredible on the basis of the supposedly unreasonable, unusual or improbable way in which actors in the returning state are said to have behaved.
10. Ms Fitzsimmons refers me to paragraphs 9 to 15 of her Grounds of Appeal, all of which I have considered, and particularly points out the Appellant cannot discern why precisely the judge has at paragraph 31 rejected the credibility of his account of his wife being an only child other than the

judge's view that he is not a credible witness and submits that this is entirely circular supposition and a party to an appeal must know the reasons as to why their account is rejected.

11. Finally, she takes me to paragraphs 21 to 24 of the supplementary bundle and the rejection by the judge of the credibility of the Appellant's account that his father was in Mogadishu partly on the basis of the remittance slip contained therein. Again, she submits the judge has failed to make clear findings.
12. Ms Wilcox-Briscoe in response addresses each purported Ground of Appeal in turn. Firstly, so far as the Appellant's exit from Somalia is concerned she takes me to paragraph 26 of the decision, submitting that the judge has looked at the evidence and made a finding that the Appellant would have been instrumental in the decision to travel to the United Kingdom separate from other family members. She submits that the analysis by the judge is not taken out of context, that the judge has looked at the evidence and given an explanation which is reasoned and one which she was entitled to make.
13. Secondly, she turns to the screening interview. Whilst accepting the reasoning in *JA (Afghanistan)* she submits that the judge has looked in detail at what was carried out at the screening interview and that that in any event is merely one requirement of the judicial function and that it is appropriate to look at the decision in the round. While she would not concede that there is an error of law on this allegation, she would submit that even if there were it does not affect the remaining findings.
14. So far as the third contention is concerned and the suggestion that the findings are speculative, Ms Wilcox-Briscoe points out the evidence was submitted even though the judge may not have referred to it and that there is objective evidence available of roadblocks, the presence of Al Shabab and the abduction of women and forced marriages. She reminds that the Appellant's wife would have been a lone female travelling to Mogadishu on her own and she submits that the findings made in some detail by the judge are ones that were sustainable and that her findings of adverse credibility are ones that she was perfectly entitled to reach.
15. Finally, with regard to the fourth ground she submits that the judge has given adequate reasons, for example mobile phones can be used across various countries, and it was open to the judge not to place weight on the remittance slip showing a Kenyan mobile number and that the judge has dealt with this aspect satisfactorily. For all the above reasons she asked me to reject the Appellant's appeal and to find no material error of law in the decision of the First-tier Tribunal Judge.

The Law

16. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by

taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

17. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

18. I have taken the opportunity to read in detail the decision of the First-tier Tribunal Judge. There are numerous findings of adverse credibility throughout the decision between paragraphs 21 and 32. All of those credibility findings are backed with reasons. It is appropriate to look at the approach that has been adopted by the First-tier Tribunal Judge to credibility. Clearly a proper approach to credibility will require an assessment of the evidence and of the general claim and it would be appropriate to look at the internal consistency, the plausibility and the consistency of the claim with external factors of the sort typically found in country guidance. I accept that in theory a claimant need do no more than state his claim but that claim would still need to be examined for consistency and inherent plausibility and in nearly every case external information against which the claim could be checked will be available, as is the case here.
19. That is exactly what the judge has done in this particular matter and even if it were to be arguable that if one of those reasons did not bear analysis, as is contended so far as the second Ground of Appeal is maintained, the Court of Appeal in *JA (Afghanistan)* have set out that the mere fact that some of their reasons do not bear analysis is not of itself enough to justify an Appellate Court setting aside the decision.
20. This is a judge that has looked at all the evidence in the round. She has made findings based on reasons that she was entitled to. In effect, with the greatest of respect to the efforts of Ms Fitzsimmons, all that is set out

in the Grounds of Appeal and in the current submissions is an attempt to re-argue this matter and to disagree with the findings of the judge.

21. The judge has addressed all issues and given reasoned explanations. Even if it could be contended that there is an error at paragraph 2 as set out in the Grounds of Appeal, it is incumbent upon the Tribunal to look at the matters in the round. Overall, the judge has made findings on credibility which are sustainable and she has given reasons. For all the above reasons therefore, the decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal is maintained.

Notice of Decision

The decision of the First-tier Tribunal discloses no material error of law. The Appellant's appeal is dismissed and the decision of the First-tier Tribunal is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

1 October 2018

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

1 October 2018