



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

Appeal Number: PA/02705/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 19th September 2018**

**Decision & Reasons
Promulgated
On 19th October 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**ABDI [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson, Counsel, instructed by Broudie Jackson & Canter (Dale House)

For the Respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 8 May 2018, Judge Devlin of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a national of Somalia, against a decision made by the respondent on 9 February 2018 refusing his protection claim. The basis of the appellant's claim was that he was from the "Sab" or "outcast" Madhiban clan specifically Mohamed Gorgate who feared persecution on account of having been targeted by Al Shabab as he

was employed as a driver for a member of the Somali General administration in the ports of Mogadishu.

2. The decision of the judge was said to be wrong in law in that he had (i) incorrectly interpreted the background evidence (which states that the nickname “Madhiban” is used to refer to outcast groups collectively) and mistakenly viewed it to be contradictory on the part of the appellant to assert both that he was from a minority clan and that ethnically/genealogically he was Hawiye (who are a majority clan); (2) failed to consider material evidence in the form of the appellant’s explanations for alleged inconsistencies in his evidence regarding the number of times he was approached by Al-Shabab before he fled to Somalia in 2007, an alleged inconsistency regarding his reason for returning to Somalia in 2013, and his failure to mention in his screening interview that his employment also included looking after his employer’s kids and taking them to school; and (3) made contradictory findings as regards the appellant’s credibility.
3. I express my gratitude to the representatives for their clear and well-argued submissions.
4. In the event I have concluded that the judge materially erred in law. There is much to commend about the judge structured approach to credibility and his very thorough analysis of the evidence. However, in considering the efficacy of his analysis I have to ask whether it is intelligible and whether the reader can understand clearly from it why the appellant’s evidence was found not credible applying the lower standard of proof.
5. As regards ground 1, as Mr Tan conceded, the background evidence on the status of the “Sab” or “outcaste” Madhiban clan is diverse and the document on which the judge set particular store – the “Genealogical Table of Somali Clans”, has an entry under ‘Hawiye’ listing “Gorgate” – appears to show that the appellant’s clan did historically originate from the Hawiye and yet did exist as an outcast clan as a consequence of the historical ostracism of Mohamed Gorgate. This assessment was consistent with the Tribunal country guidance case of **MA (Galgale Sab Clan) Somalia CG** [2006] UKAIT 0007. Accordingly I consider that it was unsafe for the judge to conclude that the background evidence indicated persons were either Hawiye or outcasts and could not originate from both.
6. So far as concerns ground 2, I do not consider that it is made out on its own since the judge clearly did, when identifying certain inconsistencies, show that he took into account the appellant’s attempted explanations.
7. However, this does not assist the respondent, since in addition to the judge’s failure to assess the background evidence as regards ethnicity properly, I see particular force in ground (3). I have already commended the judge for adopting a structured approach to credibility. In line with the guidance given by the UT in **KB & AH (credibility structured**

approach) Pakistan [2017] UKUT 491 the judge sought to analyse the credibility of the appellant's account from different angles by reference to established credibility indicators (sufficiency of detail; internal consistency; external consistency; and plausibility). The judge also, promisingly, appeared to understand that according to the guidance the appellant's account by reference to each of these indicators, had to be considered cumulatively: At para 209 he stated:

"209. I now come to look at everything in the round. When I do, I find that (a) the lack of detail in the Appellant's account of his membership of the Mahdiban, and the lack of telling detail elsewhere; (b) the significant discrepancies I have identified; (c) the absence of any clear independent evidence in support of the Appellant's claimed clan membership, self-identification with the Hawiye, his account of his reasons for leaving South Africa and of the events that led to his departure from Somalia in 2017; and, (d) the implausibilities, etc. that I have identified, taken cumulatively, exercise a strong negative pull."

However, he immediately followed this statement at paragraph 210 with the following statement:

"210. I find that the broad consistency of the evidence of the Appellant's clan membership; the broad consistency of the Appellant's account; its congruence with the country background evidence; and the fact that the Appellant was granted refugee status in South Africa, taken together, are insufficient to effectively counteract that strong negative pull."

When one further tracks back to look at what the judge concluded overall in respect of each of these indicators, the difficulties intensify. It is clear that he found the appellant had provided sufficient detail in relation to certain aspects of his claim but not others, in particular not as regards the appellant's clan membership. The difficulty here is that viewed in the round the appellant had provided very considerable detail about his clan membership and which, certainly once it is understood that it was not inconsistent for the appellant to claim on the one hand that he was Mahdiban but on the other that he originated from the Hawiye, was reasonably accurate.

8. As regards inconsistencies, whilst the judge went on to identify three "significant" discrepancies he was also prepared to say earlier in para 201 (as well as in para 210 as cited above) that it remained that the "broad outlines of the Appellant's account have remained consistent throughout". The error on the part of the judge in this analysis is to mistake the wood for the trees. It was for the appellant to prove his case but he only had to do so to the lower standard of proof. If the appellant's evidence was "broad[ly] consistency", then it is difficult to follow why it was seen overall to be inconsistent.
9. A similar difficulty afflicts the judge's treatment of the indicator of plausibility (see para 207) where the judge appears to require complete plausibility rather than assessment of the degree of plausibility overall.

10. Coupled with the judge's erroneous approach to the background evidence on the appellant's ethnicity (Ground 1), I consider that Ground (3) succeeds in establishing that the judge materially erred in law.
11. I repeat my positive opinion of the judge's structured approach but conclude that ultimately his application if it resulted in legal error by failing to explain why viewed in the round, the appellant had not established the credibility of his account to the lower standard.
12. Accordingly the judge's decision is set aside for material error of law.
13. It follows from my above findings that the judge's adverse credibility findings cannot be preserved and that accordingly the proper course is to remit the case to be heard de novo by the FtT.
14. In case it assists the next judge who deals with this appeal, my own concerns are not so much about the credibility of the appellant's account as about whether, even if credible, it suffices to establish a real risk of persecution or serious harm, given that (i) he appears to have lived and worked in Mogadishu previously; (ii) Al Shabab no longer has the power and influence it did previously in that city; and (iii) membership of an outcast clan was unlikely in 2018 to prevent him accessing available protection. The focus of the next hearing may well need to be on whether (even assuming his account was credible) he would experience significant difficulties if he was returned to Mogadishu.
15. For the above reasons:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT.

No anonymity direction is made.

Signed

Date: 15 October 2018



Dr H H Storey
Judge of the Upper Tribunal