



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03202/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 1st October 2018**

**Decision & Reasons Promulgated
On 18th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**MR I D I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam, Counsel
For the Respondent: Mr S Whitwell, HOPO

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Rothwell dismissing his appeal against the refusal of the respondent on 20 February 2018 to grant him asylum and leave to remain in the UK on human rights grounds.
2. The appellant is a citizen of Somalia. He states that he left Somalia at the start of 2016 and went to Ethiopia where he stayed for about seven months. He applied for an EEA family permit on 14 November 2016, on the basis of his marriage to a Norwegian citizen. This was granted on 16 November 2016 and expired on 15 May 2017. He applied for an EEA residence card on 8 March 2017 which was refused on 4 August 2017.

3. He claimed asylum on 1 September 2017 and a screening interview took place on the same day. The substantive interview took place on 31 January 2018 and the claim was refused on 20 February 2018.
4. He claimed that he is in fear because of his clan membership as a member of the Dhulbahante clan and he is a singer. He had been attacked in Somalia by groups affiliated to Al-Shabaab. Some of his songs are politically motivated and Al-Shabaab see his songs as anti-Islam. Also, some of his songs support self-governance for Dhulbahante clans. He has been performing on Horn Cable TV which is watched across Somalia. He plans to carry on singing such songs if he were to be returned to Somalia.
5. The judge accepted the centrepiece of the appellant's claim. She was shown a YouTube video of the appellant singing at the Horn TV contest and accepted that he is a singer. The judge also accepted that the appellant sings songs that make political statements against rulers in Somaliland and for self-determination by the appellant's clan.
6. The judge considered the appellant's evidence that he was attacked in 2014 after the TV show but he also said the TV show took place in summer 2015. She did not find that this discrepancy affected his overall credibility about this event. The judge accepted that the appellant was attacked by unknown persons. There was no medical evidence, but she accepted that the interviewing officer saw a scar and he attempted to show the scar to her. He gave a detailed account of the gun with a knife on the end and they were holding him back by his chest, which is how the injury occurred.
7. The judge noted that the appellant stated in his interview that he was unsure who the persons were, but he now stated that he heard from people in his community in Somaliland that they were from Al-Shabaab. There was no evidence from his community supporting this. However, the background evidence supported the appellant's contention that Al-Shabaab act under cover and sometimes wear uniforms to disguise themselves. The judge was willing to give the appellant the benefit of the doubt that his community in Somaliland believed that such attacks have been carried out by members of Al-Shabaab.
8. The judge noted the appellant's evidence that after the attack he went into hiding for two weeks, but then returned to his home town where he lived until he left at the beginning of 2016. He said that he kept things secret and said that he was well-known because of his singing. But he also stated that it was a small town. The judge said she had accepted that he appeared on Horn Cable TV. Therefore, given the background evidence that Al-Shabaab have very extensive networks of informants and intelligence she could not see how the appellant was able to continue living in Somaliland for about one or two years if he had seriously upset Al-Shabaab because of his singing which was viewed as anti-Islamic.
9. The judge considered the appellant's evidence that he was at risk from the authorities as musicians and artists have been arrested on return. She found that she could not see how the appellant was able to live in

Somaliland for about one or two years after his appearance on Horn Cable TV if the authorities were concerned about such persons.

10. She considered the submission in relation to **HJ (Iran)**, but the appellant had continued to sing and perform in Somaliland and he was not at risk. There was no evidence that he would be at risk because of his protest songs about Sool and Sanaag. The judge said she was not referred to any evidence about the appellant's clan or that this was related to the situation in Sool and Sanaag. She assessed the background material but could find no reference to whether they are a majority or a minority clan. There was no expert evidence which explained this further.
11. The judge said that in submissions Mr Aslam referred to the case of **MOJ and Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)**. She said that although the appellant was born there he moved to Somaliland. There was no evidence that he would be returned there or evidence from the appellant about any situation there. The evidence seems that there are flights from Mogadishu to Hargeisa.
12. The judge did not find on the current evidence that the appellant is a refugee. She did not find that he is a person in need of humanitarian protection and did not find that there would be a breach of Article 3 because there was no evidence that he would be returned to Mogadishu. She has not found him to be at risk in Somaliland.
13. The judge said there was the discreet issue relating to the appellant's health condition. As the medical evidence stood he was due to have a pre-operative assessment on 10 April 2018. The documents state that he has prostate cancer and will be having surgery. There was not enough medical evidence currently before her that shows the appellant would need chemotherapy or radiotherapy on return to Somaliland or Mogadishu. The background evidence has said this is not available. There was no evidence about the type of surgery he will need, but it appeared to her that this would happen in Leicester in the very near future as he was due to have a pre-operative assessment on 10 April 2018. Therefore, as matters stand she did not find that the UK will be in breach of her obligations under Article 3.
14. She found that the appellant does not fall within paragraph 276ADE(1)(iii) as he has not been here for twenty years. He does not fall within paragraph 276ADE(1)(vi) as the situation currently stands she found that he would not face very significant obstacles to reintegration in Somalia.
15. Permission was granted on a very narrow ground. On the basis that it is arguable, that the judge has not adequately dealt with the appellant's evidence in interview as to how it was that he had not come to the adverse attention of the authorities and Al-Shabaab for one to two years prior to leaving Somalia, and that in circumstances where the core of the appellant's account was accepted, including in respect of him having been previously attacked, and considering the background evidence as to risk upon return as a singer who is singing political songs supporting self-

determination, the judge was wrong to conclude that the appellant would not be at risk upon return.

16. Mr Aslam relied on paragraph 7 of the grounds which argued that the judge failed to consider the appellant's evidence in his asylum interview at questions 31, 52, 56, 58 and 94 in which he stated that he kept a low profile, was in hiding and slowed his activities. He did not sing in public, but did sing privately to earn a living.
17. Mr Whitwell submitted that the judge at paragraph 43 was willing to give the appellant the benefit of the doubt that his community in Somaliland believed that such attacks have been carried out by members of Al-Shabaab. At paragraph 42 she had accepted that the appellant was attacked by unknown persons and the appellant had said in his interview that he was unsure who the persons were.
18. Mr Whitwell submitted that the judge's findings at paragraph 44 and 45 were sufficient.
19. Having considered the submissions by both parties, I find that the judge did not err in law.
20. I find that the judge's findings at paragraph 44 and 45 sufficiently dealt with Mr Aslam's submissions. The judge held as follows:

"44. The appellant said after the attack he went into hiding for two weeks, but then returned to his home town where he lived until he left at the beginning of 2016. He said that he kept things secret and he states that he was well-known because of his singing. But he also states that it was a small town. I have accepted that he appeared on Horn Cable TV. Therefore given the background evidence that Al-Shabaab have extensive networks of informants and intelligence I cannot see how the appellant was able to continue living in Somaliland for about one or two years if he had seriously upset Al-Shabaab because of his singing which was viewed as anti-Islamic.

45. The appellant states that he is at risk from the authorities as musicians and artists have been arrested on return. I cannot see how the appellant was able to live in Somaliland for about one or two years after his appearance on Horn Cable TV if the authorities are concerned about such persons".

21. I find that the appellant would not have been able to keep a low profile, be in hiding and slow his activities and still earn a living by singing privately without coming to the attention of Al-Shabaab with their extensive networks of informants and intelligence in the two years prior to his departure from Somalia if he had indeed upset Al-Shabaab. I find that the judge's decision was open to her on the evidence.
22. I find that the judge's decision does not disclose an error of law.

23. The judge's decision dismissing the appellant's appeal shall stand.

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: 15 October 2018

Deputy Upper Tribunal Judge Eshun

Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 15 October 2018

Deputy Upper Tribunal Judge Eshun