



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05709/2018

THE IMMIGRATION ACTS

Heard at Field House
On 21st September 2018

Decision & Reasons Promulgated
On 25th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAID [D]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss S Vidyadharan (Senior HOPO)
For the Respondent: Miss S Panagiotopoulou (Counsel)

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Sweet, promulgated on 22nd June 2018, following a hearing at Hatton Cross on 5th June 2018. In the decision, the judge allowed the appeal of the Appellant, whereupon the Respondent

Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me. I will refer to the parties as they were referred to in the First-tier Tribunal.

The Appellant

2. The Appellant is a male, a citizen of Somalia, and was born on 21st October 1985. He appealed against the decision of the Respondent dated 21st April 2018 refusing his claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a member of a minority group in Sudan, and has a perceived profile, in that he is the son of his mother, who worked for the Government and for an NGO, as a District Manager/Chairlady, as an Administrator for Mogadishu Council. She was killed by Al Shabaab because of her position in the Government (see AIR at Q. 111). His claim is that, he is not an ordinary citizen. He is not able to avail himself, as an ordinary citizen would, of being able to return to Mogadishu, even as a minority member, and find safety. He has no family in Somalia and has no financial resources.

The Judge's Findings

4. The judge specifically noted the essence of the Appellant's claim (at paragraph 36) in a way that was designed to distinguish it from the country guidance case of **MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 00442**. He observed that the continuing position, with respect to the Appellant's family was that his brother was receiving threatening messages from Al Shabaab (paragraph 35). As against this, the judge observed that the Presenting Officer had also made it quite clear that the Appellant's sister did return back to Somalia in 2016 and had no problems, even though she returned as a lone female (paragraph 30). It was also stated by the Presenting Officer that the Appellant's mother had previously worked as a housewife and only worked for the Government for six years, such that she would not have been killed, as a result of working for the Government, in the manner alleged by the Appellant (paragraph 27).
5. The judge went on in his conclusions to observe that the Appellant's case is based upon threats from Al Shabaab. Moreover, in 2000 his father and older brother were killed when the house was bombed due to a conflict between clan and warlords. In 2006 he fled to Kenya with his mother, sister and other brother. They stayed there in the UN Dadaab refugee camp. His mother returned to Somalia in 2010 and took up the role of Administrator/Chairlady with the local Government. It was then that his mother was killed by Al Shabaab six years later in 2016. His mother then received threats from Al Shabaab saying that if he were to take up his mother's position, he would be killed. His mother's position was then replaced by a man who was not a member of the family (paragraphs 40 to 41).

6. The judge held that, "I have found the Appellant's account to be credible". He stated that "The question then is whether he is at risk on return to Somalia" (paragraph 45).
7. In this respect, the judge properly led himself into a discussion of the country guidance case of **MOJ [2014] UKUT 000442**. He specifically referred to paragraph 407 (at paragraph 46) and to paragraph 408 (at paragraph 48) in coming to the conclusion that the Appellant would indeed be at risk of ill-treatment if he were to be returned to Somalia.
8. The appeal was allowed.

Grounds of Application

9. The Respondent's grounds of application state that the Appellant, who had made a claim on the basis of imputed political opinion, could not succeed as a member of a minority clan because the Tribunal had stated in **MOJ [2014] UKUT 000442** that the Appellant could not be at risk of ill-treatment. He had no political profile. He would be unknown to persons there. The judge had not identified any agents of persecution. It was not clear why anyone would be interested in the Appellant. There would be no perceived link between the Appellant and his mother. At most, the Appellant may be destitute if returned to Somalia, but destitution did not make him a refugee. He had only been in the UK for some four years, and although he had relied upon other people's financial support, there was no reason why, as a fit and young adult male, with no medical problems, he could not return back to Somalia.
10. On 25th July 2018 permission to appeal was granted by the Tribunal. It was observed that the judge had failed to identify the risk categories specified in **MOJ**, that the Appellant would fall into. It was observed that the judge did not appear to give reasons for why the Appellant would not be able to access the economic opportunities identified in **MOJ**. Nor are the judge's reasons evident for departing from **MOJ** in respect of the risk in Mogadishu.

Submissions

11. Appearing before me on 21st September 2018 was Miss Vidyadharan, on behalf of the Respondent Secretary of State, and she submitted that the judge fell into an error of law. He had misapplied the country guidance of **MOJ**. This was clear from paragraph 20 of the decision, because it had been noted that the Appellant had never been involved in politics, and it is two years since his mother's death, and her position has been replaced by a man who was supported by the Government, such that he would not be at risk upon return. Moreover, his sister had visited Somalia in 2016 and had not faced any problems.
12. In addition, the Appellant had come to the UK on a spouse's visa, as a husband, although it was the case that he was currently divorcing his wife (paragraph 38). The judge had specifically recognised that the Appellant's mother's position had been replaced by a man who was not a member of the family (at paragraph 41), such that there was no reason why the Appellant would be targeted.

13. The Appellant's mother had only been an employee of Mogadishu Council for six years (see paragraph 42), as opposed to what was being said in the death certificate, such that the evidence was not reliable in this respect. The Appellant may well return to a condition of destitution and poverty, but that was not the test, under the MOJ guidance, and the judge had failed to apply that guidance. Miss Vidyadharan then went on to say that if one looks at the preamble of the country guidance case of MOJ, it is clear that the preamble states (at paragraph 2) that a person who is a general civilian will not upon return to Mogadishu, after a period of absence, be at risk, simply on account of having lived abroad.
14. Furthermore, it is clear from paragraph 5 of the same preamble that there has been a reduction of the level of civilian casualties over time. In addition paragraph 9 of the same preamble makes it clear that there needs to be a careful assessment of the situation, and the judge here had failed to do so.
15. For her part, Miss Panagiotopoulou, appearing on behalf of the Appellant submitted that the grounds were no more than a disagreement with the judge's decision. They do not challenge the core findings that the judge made. There is no challenge to the fact that the Appellant had undergone past persecution in Mogadishu where he had lived. It was accepted he was a member of a minority clan. He had fled Mogadishu because his family had been persecuted. He had gone on to live with his family in Kenya. He had been fingerprinted by the UN and had sought refuge with the UN. He had remained in Kenya until 2012. He had no relatives left in Somalia. His mother had then been killed by Al Shabaab. There were documents proving the mother's death. There was also the original ID card confirming that the mother worked for the Government and for the NGO (see paragraph 15).
16. Against this background, the judge had found that precisely because of the Appellant's background and his ethnicity, implying an imputed political opinion because of his mother's position in Government, he would be at risk, whether or not the mother's position had been replaced by a man who was not related to him, if he were to return to Somalia. It was not the case that the judge had failed to undertake a proper assessment of the facts. As soon as the judge stated that he found the Appellant's claim to be a credible one, he had embarked upon an assessment of the situation (at paragraphs 45 onwards). Moreover, the judge had then specifically referred to the relevant guidance given in MOJ that the judge was being presently criticised for. There simply was no error of law and the decision of the judge should be upheld.
17. In reply, Miss Vidyadharan submitted that, even if there were reasons given, the fact was that there was insufficiency of reasoning with respect to the country guidance case, and what it required.

No Error of Law

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision. My reasons are as follows. First, the judge makes the

findings of fact in relation to core aspects of the claim, as he was entitled to do. He finds that the Appellant is at risk on the basis alleged. That basis is carefully set out under the heading "Submissions" by the judge, when he observes that the Appellant is not actually returning as an "ordinary citizen". He is a minority group member. He is not an ordinary citizen. Moreover, he has no family in Somalia and has no financial resources there (paragraph 36). Thereafter, in applying the country guidance case to this situation, the judge draws upon the evidence given by various sources (see paragraphs 40 to 42). The judge finds this evidence to be credible.

19. Second, the remaining issue then is the application of the country guidance case. This has been the thrust of the grounds of application, and the area where Miss Vidyadharan concentrated her efforts. The challenge on this basis, however, is not well-founded. This is because the judge states (at paragraph 46) that the reference to **MOJ** shows that a person returning to Mogadishu after a period of residence would look to his nuclear family, if he has one living in the city for assistance in establishing himself.
20. Although a returnee may seek assistance from clan members, who are not close relatives, "such help is only likely to be forthcoming from majority clan members, as minority clans may have little to offer" (paragraph 407). Therefore, it is not simply a matter of saying that the Appellant can, just as an ordinary citizen, return back to Mogadishu, because this depends upon the existence there of his nuclear family, in the first instance, and in this case the Appellant did not have such an assistance.
21. Furthermore, the judge also goes on to consider the position that in the absence of there being no nuclear family or close relatives in the city to assist the Appellant, he does indeed have to take account of the fact that "there will need to be a careful assessment of all the circumstances" (paragraph 47). He is very specific in noting that these considerations "are not limited to circumstances in Mogadishu before departure", or the "length of absence from Mogadishu" or "family or clan association". Neither is it confined to "access to financial resources", or "prospects for securing a livelihood".
22. Indeed, the judge observes that it would be for the Appellant, facing return to Mogadishu to explain "why he would not be able to access the economic opportunities that had been produced by the economic boom" (paragraph 48). In this respect, the judge is clear that **MOJ** is a party for the proposition that it will only be those with:-

"no clan or family support who will not be in receipt of remittances from abroad and who have no real prospects for securing access to a livelihood on return, and who will face the prospect of living in circumstances falling below that which is acceptable on humanitarian protection grounds"

who would be able to demonstrate a successful claim in this respect. The Appellant's circumstances were such that he could do so. The judge had taken proper account of **MOJ** (particularly paragraph 408 from which the latter proposition is drawn).

23. Finally, the judge had regard to the fact that Al Shabaab continue to kill prominent peace activists, and family members of elected people. There was objective evidence that minority groups are disproportionately targeted and killed (at paragraph 50).
24. It is well-known that for an application to succeed on the basis of an error of law the relevant test is that set out by LJ Brooke in **R (Iran) [2005] EWCA Civ 982**, where it was made clear that “perversity” is a test which “represents a very high hurdle” (at paragraph 11). I am satisfied, that that very high hurdle has not been met in the challenge to the decision of Judge Sweet.

Notice of Decision

25. There is no material error of law in the original judge’s decision. The decision shall stand.
26. No anonymity direction is made.
27. The Secretary of State’s appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

20th October 2018