Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08221/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th March 2018	**On 27th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

HARAMEIN JEILANI MOHAMMED
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Tiki Emezie (Solicitor)
For the Respondent: Ms A Brocklesby-Weller (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge C A Parker, promulgated at Taylor House on 8th December 2017, following a hearing on 10th November 2017. In the determination, 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.

The Appellant

2. The Appellant is a male, a citizen of Somalia, who was born on [ ] 1986. He appealed against the decision of the Respondent Secretary of State dated 21st July 2016 refusing his application to remain in the UK, given his protection claim and his human rights claims. The Appellant's claims were against the Respondent's letter of 26th May 2015 advising the Appellant that under Section 32(5) of the UK Borders Act 2007, he is required to be deported unless he could demonstrate that he fell within one of the specified exceptions set out in Section 33 of the Act. The Appellant made representations in response to this which were dated 18th June 2015 and 18th May 2016, where he explained why he should not be deported.

The Appellant's Claim

3. The Appellant's mother arrived in the UK on 4th September 2000. She made a protection claim. The Appellant was a dependent on his mother's claim. She was granted exceptional leave to remain and thereafter was granted indefinite leave to remain on 26th February 2006. The Appellant was granted leave in line with his mother. However, on 2nd October 2008 he was committed of an offence which attracted automatic deportation. The judge on 12th July 2010 noted the Appellant's minority clan membership had not been considered by the Respondent. The decision to deport was withdrawn on 12th March 2010. The Appellant made a further representation to him on 1st July 2010. However, he was then convicted of a further offence on 10th August 2011. He was again notified of his liability to automatic deportation. Again he was invited to make further representations for why he should not be deported. His protection claim was then refused on 25th July 2013. On 30th July 2014 he was issued with a notice of liability to removal. On 26th May 2015 he was served with notice of liability to deportation.

4. The Respondent explained the reasons as being the Appellant's criminal convictions. He had driven a car while uninsured. He had driven a vehicle without a licence, and he had resisted arrest by a constable. He was convicted on 2 October 2008 on three counts of supplying a controlled drug – class A and sentenced to four years' imprisonment on each count. His sentence was varied on appeal to 14 months' imprisonment for each conviction running concurrently. He was then convicted again for driving a motor vehicle with excess alcohol. He was found to have been using a vehicle while uninsured and driving otherwise than in accordance with a licence.

5. In short, the Respondent stated that the Appellant had committed a particularly serious offence and considered to be a danger to the community of the United Kingdom. Reliance was placed by the Respondent to the case of **MOJ (return to Mogadishu) CG [2014] UKUT 442**. The Respondent concluded that the Appellant was a "ordinary citizen" returning to Somalia, and did not face a real risk of coming to the adverse attention of Al-Shabab. His membership of a minority clan did not subject him to risk of harm, as this was no longer an issue.

The Judge's Findings

6. The judge began his consideration of the appeal by pointing out that this was a case where "neither the Appellant nor Respondent has covered themselves in glory in terms of their preparation and representation of this appeal" (paragraph 58). This is not least given that there had been a failure to take a decision by the Respondent to deport the Appellant on two previous occasions. The judge observed that, "the most likely reason appears to be Article 3 considerations, or that this is speculation on my part". This was also a case where "there has been considerable confusion concerning the Appellant's immigration status and the Respondent has apologised for this to some extent in the refusal letter at paragraph 98". The Respondent stated that the Appellant had not been adversely affected by this. The Appellant stated that he had been. He pointed out that he had been unable to work since his residence card expired in March 2014. On the other hand, it emerged that the Appellant did have indefinite leave to remain throughout the period (paragraph 15).

7. The judge, having considered everything, came to the conclusion that this was an Appellant who had left Somalia at the age of 14 and was now 31 years old. Throughout this period he has lived with his mother. Although he will remain familiar with some aspects of Somali culture and customs, this was a case where "he has spent most of his formative years and the whole of his adult life in the United Kingdom". There was no evidence of any health problems. Nevertheless, the judge could not find that the Appellant was a resourceful young man who would be able to easily avail himself of what opportunities might be available in Somalia (paragraph 61).

8. The appeal was allowed.

Grounds of Application

9. The grounds of application state that the judge failed to give clear reasons for the findings made. It was not clear why a healthy young man with no medical issues would be unable to live independently in Somalia. The judge did not put sufficient consideration to the possible advantages the Appellant would have upon returning to Somalia which had a booming economy now (see paragraphs 351 to 352, and paragraph 477 of **MOJ**).

10. On 5th January 2017 permission to appeal was granted on the basis that it was not clear why the judge found that the Appellant was not capable of living independently in Somalia.

Submissions

11. At the hearing before me on 5th March 2018, the Appellant was represented by Mr Tiki Emezie, a Solicitor, and the Respondent was represented by Ms Brocklesby-Weller, a Senior Home Office Presenting Officer. Since it was the Respondent Secretary of State's appeal, she began by stating that, to allow the appeal under Article 3 ECHR, was irrational given that the Appellant could not be at risk of

poverty and destitution under the principles set out in **MOJ [2014] UKUT 442**. Although a reference was expressly made to that country guidance case (at paragraphs 66 to 67) the fact was that the strictures of that case were not properly applied on the facts here. There is no reason why the Appellant would not be able to live independently in Somalia. This was because, as the judge pointed out no Somali or Bravanese interpreter was requested at the hearing to interpret, and the Appellant spoke and understood some Bravanese, although the judge also noted that, "but I am not satisfied that he is fluent or confident in that language" (paragraph 66).

12. Second, the Appellant was not a particularly young child when he left Somalia. He was 14 years of age then. Although he was 31 years of age now, he would have sufficient recollection of that country, and sufficient wherewithal, to be able to manage in that country quite independently without any support from anywhere else. He had been engaged in criminal conduct across a range of activities in the UK. He did attend school here. He did acquire some skills. These are vocational skills. It did not make sense to say that he would not be able to fend for himself there.

13. Ms Brocklesby-Weller referred to the Tribunal decision in **AAW (expert evidence – weight) Somalia [2015] UKUT 00673**. In that case the Appellant faced the prospect of removal after seventeen years in the UK. He had no nuclear family or other close relatives in the city. He was also a member of the minority clan. The Tribunal pointed out that this required an examination of all the circumstances. This meant circumstances in Mogadishu, the length of absence from Mogadishu, the clan associations the Appellant may have, his access to financial resources, the possibilities of him securing a livelihood, the availability of remittances from abroad, his means and support during the time spent in the UK, and why his ability to fund the journey to the west no longer enables an Appellant to secure financial support on return. The Tribunal referred to the economic boom in the country. There was no evidence that returnees were taking jobs at the expense of those who have never been away. Only those with no clan or family support, who will not be in receipt of remittances from abroad, and who have no real prospect of securing access to livelihood on return, would face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms (paragraph 47). Ms Brocklesby-Weller submitted that this was the case here also. The Appellant would have the prospect of securing access to livelihood on return.

14. Second, there was a material error on the part of the judge in not referring to the Facilitated Return Scheme. Under this the Appellant would be entitled to claim £750 "should he choose to apply for it" (see paragraph 57 of **AAW**). There is no mention of this at all by the judge in this determination.

15. Third, there was a submission in **AAW** also that for much of his time in the UK the Appellant had been unemployed and homeless. It was not the case here, submitted Ms Brocklesby-Weller, that the Appellant had been homeless. He had been living with his mother all along. Moreover, the judge in **AAW** referred to the level of skills, which were quite similar to the ones that the Appellant had acquired here, which had been available in that case also (see paragraph 15). The Appellant there had

completed eight weeks of a sixteen week course in bricklaying. The conclusion reached in **AAW** was that, "all of this indicates that the Appellant would be a person who, in seeking low skilled work in Mogadishu would have advantages over those without anything to show a prospective employer, particularly given his construction qualifications" (paragraph 59).

16. Finally, my attention was drawn to the Court of Appeal judgment in **Said [2016] EWCA Civ 442**. This emphasised that what was required was in the "nature of exceptional and compelling circumstances in the Strasbourg cases" (paragraph 19). The present case did not exhibit these features.

17. All in all, therefore, the judge was wrong to conclude that there were,

> "... substantial grounds for believing that there is a real chance of the Appellant finding himself homeless and destitute upon return to Mogadishu on account of his minority clan membership, limited language ability, lack of experience of independent living or employment, lack of family in Mogadishu or support in the UK and absence of a very lengthy period" (paragraph 77).

18. For his part, Mr Emezie, submitted that everything that was set out as being relevant in the country guidance case of **MOJ (return to Mogadishu) CG [2015] UKUT 442** had been found by this judge, in a careful and plausible determination, to be in the Appellant's favour.

19. First, there was recognition right at the outset of the determination of the fact that "the Respondent acknowledged that the Appellant would not have support from his nuclear family in Somalia" (paragraph 12).

20. Second, the Appellant had stated that he had now a record of well-behaved conduct in prison and he had completed various courses. He understood how his actions affected society as a whole. He no longer took drugs or drinks alcohol. The Appellant's mother and siblings are British citizens and the Appellant is the main carer for his mother who has been suffering persistent lower back pain for over fifteen years (paragraph 13).

21. Third, there was evidence that the Appellant hardly knows "the country" when it comes to Somalia. He is a person who "does not properly understand the language and can only speak a little". Somalia was dangerous and alien to him. He knew nobody there. His family would not join him owing to the risks there. Moreover, although the Appellant was an adult, "he had not formed his own independent life" (paragraph 33).

22. Fourth, the Appellant was actually asked about his rehabilitation during the hearing and he stated he was unable to get drink or drugs while he was in prison and he had stopped taking them. He had undertaken courses addressing his alcohol and drug consumption. The Appellant was no longer in contact with any of those with whom he had associated leading to a conviction for his drug offences in 2008 (paragraph 37-38).

23. Fifth, the Appellant was then asked about his qualifications when he confirmed that he had left school at the age of 16 having taken some GSCEs but he had not really passed them. He is dyslexic. He could not write properly (paragraph 39).

24. Sixth, the Appellant stated that he did not speak Somali although he understood some things. His mother and uncle spoke Bravanese. His uncle spoke more Somali than his mother. Importantly, there is evidence that his brother and sister do not normally speak Somali or Bravanese at home (paragraph 45).

25. Seventh, it was against this background, that the judge began consideration of the facts before him (paragraph 58). He then concluded that the Appellant's most formative years were spent in this country. The whole of his adult life was spent in this country. He had left Somalia at the young age of 14. He was now 31 years of age (paragraph 61) and he still lived with his mother.

26. Eighth, there was the question of whether the Appellant would be "resourceful" as an able-bodied person without any health problems in Somalia. It was not as if the judge did not consider this issue. He tackled it head on. He was perfectly cognisant of the fact that the Appellant had undertaken some painting and decorating work and had also been given as apprentice to his uncle to work as an electrician. In prison he had undertaken painting, decorating, plumbing and electrical work. However, the judge concluded that, "there was no evidence to support his own evidence about these claimed courses, qualifications or work experience" (paragraph 62). It remained the case that he was unable to find work in the UK since 2014 after his identity card expired (paragraph 62).

27. Finally, it was in these circumstances that the judge came to the conclusion that, "there is no evidence that he has any qualifications" (paragraph 63). The judge's view was that he could not be satisfied that there was evidence "even to the lower standard, that he is capable of living independently and being self-sufficient". The explanation that the judge gave for this was that, "apart from a brief period in 2008 when the Appellant had his own flat, the Appellant had always lived at home with his mother and remains doing so today at the age of 31" (paragraph 63).

28. Finally, as far as the cases of **AAW [2015] UKUT 00673** and **Said [2016] EWCA Civ 442** were concerned, those were cases where there was evidence that the Appellant could be in receipt of financial support from abroad, namely, from the UK, when he returned back to Somalia. This was not the case here. The Appellant was a carer for his mother. She was in no position to provide him with financial support. He was not a member of a nucleus family. He had no family in Somalia. As to there being no reference to the returns policy, there is no evidence that the Presenting Officer brought this to the attention of the judge. It was not an issue that was raised.

No Error of Law

29. 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 and remake the decision. My reasons are as follows.

30. First and foremost, the jurisdiction of this Tribunal is supervisory only. As Brooke LJ stated in **R (Iran) [2005] EWCA Civ 982**, "it is well-known that a 'perversity' represents a very high hurdle" (paragraph 11). His Lordship went on to explain that, "far too often practitioners use the word 'irrational' or 'perverse' when these epithets are completely inappropriate" (paragraph 12). The question, therefore, is whether the decision arrived at by the judge was one that could be described as "irrational".

31. Second, it is not for this Tribunal to disagree with the findings of the judge below unless there is indeed an error of law in the sense that the conclusion arrived at was "perverse". This, however, is a case where the judge appears to have had regard to all the relevant issues before him. The controlling judgment of **MOJ [2014] UKUT 442** was expressly noted by the judge at the outset (see paragraph 12). It was also accepted at the outset that the Respondent had acknowledged that the Appellant would not have support from his nuclear family in Somalia (paragraph 12). The outstanding question here has been whether the Appellant, as an able-bodied young man with no health problems, could use his skills learned in the UK to make a life for him in Somalia. Whilst I do not accept the implication in the judge's reasoning that the Appellant would not have acquired some formal qualifications in order to find work in Somalia (see paragraph 63), and that skills in painting and decorating, as well as electrical work, may well be transferable, the fact here was that the Appellant had never really lived an independent life at all, "apart from a brief period in 2008 when the Appellant had his own flat". He had always lived at home with his mother. He still lived with her at the age of 31. In addition to this, he was a carer for his mother. The conclusion reached by the judge was that when the Appellant did briefly live independently he fell with the wrong crowd and committed offences. The judge's clear finding was that the suggestion by the Secretary of State that the Appellant is a fit healthy young man "who could grasp the opportunities in Somalia runs counter to the evidence before me" (paragraph 63). That was a conclusion that was open to the judge, in circumstances where the Appellant had lived most of his formative life in the UK and the whole of his adult life here. There was an issue about his language skills but as the judge found, "he speaks and understands some Bravanese but I am not satisfied he is fluent or confident in that language" (paragraph 66). The Appellant would therefore be hamstrung with a lack of linguistic skills, on top of his dyslexic condition, and the fact that he had since the age of 14 been in this country. The conclusion was one that was open to the judge in the circumstances of this case.

32. Third, it follows from this that had it been the case that such matters had been left unconsidered, it may well have been possible to argue that the judge did not have regard to that which he ought to have had regard to, and erred in law in failing to give consideration to relevant circumstances before him. That is not the case here. The Tribunal judgment in **AA [2015] UKUT 00673** puts the position as follows. First, in order to succeed a person has to be one "with no clan or family support who will not be in receipt of remittances from abroad". Second, and in addition to this, they have to be someone who "have no real prospect of securing access to a livelihood on return" (paragraph 47). There is a conjunctive requirement here. Both elements must be proven. It is not enough for the Appellant to state that he is not in receipt of

remittances from abroad. It was also necessary to show that they would have no prospect of securing access to livelihood on return. However, in this case the judge has made precisely that finding, and has done so by pointing out that the Appellant does not have the language skills to enable him to secure employment, has not lived an independent life, and suffers from dyslexia (paragraph 62).

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 24th March 2018