



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

Appeal Number: PA/00343/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 10 May 2019**

**Decision & Reasons Promulgated
On 28 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**M H S
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer.

For the Respondent: Ms K Reid, Counsel.

DECISION AND REASONS

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the Secretary of State referred to as “the Respondent” and Mr H S as “the Appellant”.
2. The Appellant is a citizen of Somalia who appealed against a decision of the Respondent refusing him international protection. That appeal was heard by Judge of the First-tier Tribunal AM Black who, in a decision promulgated on 20 February 2019, allowed it on both humanitarian

protection grounds and under Article 3 of the European Convention on Human Rights.

3. The Respondent sought permission to appeal. It was granted on 3 April 2019 by Judge of the First-tier Tribunal PJM Hollingworth. His reasons for so granting were: -

“It is arguable that the Judge has attached insufficient weight to the available evidence in relation to suitability. It is arguable that the Judge has set out an insufficient analysis of the extent of the reasoning based on the available medical evidence in construing the evidence given by the Appellant. It is arguable that the overall credibility assessment by the Judge has been affected. In this context it is further arguable that the past dishonesty attracted greater weight. At paragraph 60 the Judge referred to not doubting that the Appellant had lied in the past to the Respondent and Entry Clearance Officer. The Judge went on to state that the Judge did not condone his dishonesty. The Judge referred to the ambit of the available medical evidence. It is arguable that these issues are pertinent to the outcome given the issues advanced in particular at paragraph 10 of the permission application. It is further arguable that procedural irregularity took place affecting the outcome as put forward at paragraph 14 of the permission application. “

4. Thus, the appeal came before me today.
5. At today’s hearing Mr Walker sought to pursue only two of the grounds seeking permission to appeal. He firstly referred me to paragraph 12 of the grounds seeking permission to appeal. This argues that the identity of the Appellant, the validity of his marriage, the paternity of the children and his nationality remained unresolved. It suggests that suitability issues were to be considered but that the Judge had clearly failed to apply them in the context of the appeal and with regard to the Appellant’s overall credibility despite finding that the Appellant had made false entry clearance applications, lied in the past to the Respondent and Entry Clearance Officers and has given little evidence of substance, stating largely that he cannot remember events in Somalia. However, Mr Walker, quite rightly, accepted that the DNA evidence within the appeal went a long way to proving the paternity of the children. However, the Appellant has behaved dishonestly in the past.
6. Mr Walker urged me to accept that the Judge had also fallen into error in her approach to medical evidence. He referred me to paragraph 52 of the Judge’s decision where she finds that the Appellant has a debilitating cognitive impairment and whilst there is no medical evidence on the issue he is not capable of taking employment to support himself. The Judge also found there that he has difficulty engaging with those around him if complex issues are raised. He has right sided physical weakness which would render even menial work very difficult indeed. He cannot put on his

own shoes, according to the medical evidence. The prospect of his being able to find employment on return are very limited indeed, to the point of being unlikely. As I say, Mr Walker urged me to accept that this was no more than speculation on the part of the Judge.

7. Mr Walker did not seek to resist Ms Reid's argument that Judge Hollingworth, in granting permission to appeal did not do so in relation to the "misdirection of law" grounds. This related to the suggestion the Judge had incorrectly applied country guidance from the authority of **MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)**. In particular a failure by the Judge to consider that only those without family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospects of living in circumstances falling below that which is acceptable in humanitarian protection terms. In any event, it is plain from a reading of the Judge's decision that she has given appropriate consideration to the relevant country guidance. She sets it out at paragraph 48 of the decision. At paragraphs 52-54 she makes findings in relation to the circumstances the Appellant would face on return to Somalia and gives adequate reasons for those findings. She also makes findings that he would be unable to work on return to his country of origin, that he would be destitute and that he would be returning alone. At paragraph 55 she explains why, even if funds were remitted from the United Kingdom, this would not assist the Appellant. The Judge has further considered these issues at paragraphs 63 and 64 of her decision. There is no perversity therein. The Judge has given proper consideration to relevant country guidance before coming to a decision that was open to her.
8. Ms Reid relied upon her Rule 24 response. She argued that the Judge had dealt with all material factual disputes and has provided adequate reasons for coming to the conclusions that she did. I find for the reasons set out in that response the Judge has not materially erred as asserted in the Respondent's grounds. The Judge has fully considered the material facts which adversely affected the Appellant's credibility with particular reference to the Appellant's previous, apparently dishonest visa application. The Judge has set out these applications at paragraph 38 of her decision and has further noted at paragraph 40 that she had not been provided with the Appellant's application form or the decision and reasons of the Tribunal dismissing his appeal against the refusal of entry clearance. However, at paragraph 57 of her decision the Judge has explicitly recorded that the applications made by the Appellant were not to his credit. She has given appropriate weight to the past dishonest applications at paragraph 60 of the decision and has gone on to fully explain why the past dishonesty had little bearing on his circumstances on return. The Judge has given careful and detailed consideration to the medical evidence contained within the Appellant's bundle and has considered all the competing issues in relation thereto. In so doing she has taken into account medical evidence including that to be found at pages 73 and 85 of the Appellant's bundle. The former is from Barts Health NHS

Trust which has attached to it the Appellant's GP notes. The latter is from the East London NHS Foundation Trust and is a report of Laura Hardy who is a specialist speech and language therapist. It makes reference to consideration of the Appellant's medical reports which show that he presented with severe cognitive difficulties and echolalic speech and that from the report writer's observations the Appellant presented with significant cognitive communication difficulties. There is no speculation whatsoever in paragraph 52 of the Judge's decision. The Judge has taken into account the evidence that she had and has come to conclusions that were open to be made. Those conclusions are adequately reasoned. Contrary to the Respondent's assertions the Judge has adequately dealt with the issue of the validity of his marriage, the paternity of his children and his nationality. They do not remain unresolved. The Judge has made findings in relation to the relationship that he has with his wife and children, his nationality and the DNA evidence which establishes that he is the father of the children.

9. None of the Respondent's grounds are made out. The Judge has come to factual findings that were open to be made on the totality of the evidence that was before her. Her decision is adequately reasoned and contains no material error of law whatsoever.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

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: 23 May 2019

Deputy Upper Tribunal Judge Appleyard