



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06202/2016

THE IMMIGRATION ACTS

Heard at Field House
On 21 May 2019

Decision & Reasons Promulgated
On 11 July 2019

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

AHK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U. Dirie, Counsel

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and background

1. This appeal comes back before the Upper Tribunal following a hearing on 27 September 2017 before Deputy Upper Tribunal Judge Bagral (“the DUTJ”) following which she concluded that the decision of the First-tier Tribunal Judge (“the FtJ”) promulgated on 31 January 2017 was marred by error of law such as to require its

decision to be set aside and for the decision to be re-made in the Upper Tribunal. The hearing before us was for the re-making of the decision.

2. The appellant is a citizen of Somalia, born in 1967. He came to the UK in November 2010 as a spouse and first claimed asylum in October 2013 but that claim was rejected and his appeal was dismissed. Further submissions were treated as a fresh claim for asylum but that claim was also rejected. His appeal was dismissed by the FtJ.
3. His fresh claim for asylum is based on his religion, as a Christian convert. The DUTJ noted that the FtJ accepted that the appellant was a genuine Christian convert but found that he would not be at risk of persecution on return to Somalia on account of his religion and would not be at risk of destitution and relocation to an IDP camp.
4. The DUTJ concluded that there was merit in the argument on behalf of the appellant that the FtJ failed to consider the impact of the appellant's conversion to Christianity and the discrimination which he accepted existed against Christians, upon the appellant's ability to access support from his family and gain employment so as to avoid destitution.
5. The DUTJ further concluded that the availability of family support and the prospects for employment were pertinent to the FtJ's conclusion that the appellant would not find himself at risk of mistreatment in an IDP camp. The FtJ had relied on a finding in his previous appeal that he would have access to family support but the DUTJ noted that the issue of the appellant's conversion to Christianity did not feature in that earlier appeal. Thus, the DUTJ concluded that it had been incumbent on the FtJ to consider whether the earlier finding settled the issue of family support in the light of the appellant's claim that he would be ostracised from his family and clan members.
6. The DUTJ further concluded that the FtJ's decision was legally flawed for its failure to consider the impact of societal discrimination on the appellant's employment prospects. The contention on behalf of the respondent relying on the FtJ's finding that the appellant would adopt a low profile on return, did not detract from the error on the part of the FtJ.
7. The DUTJ identified the issue to be determined at the re-making hearing as being that of risk on return, with the finding that the appellant is a genuine Christian convert being a preserved finding.

Submissions

8. The parties agreed that the appellant's return to Mogadishu involved the question of internal relocation, given that the FtJ in effect found that the appellant's home area was Somaliland (which was also the background to the appeal in 2014).
9. The parties further agreed that it was open to the appellant to argue before us that he would be at risk of persecution on return to Mogadishu in the light of the grounds

upon which permission to appeal was granted, the issue of family support and that the DUTJ expressly stated that risk on return required to be determined.

10. We referred the parties to *Secretary of State for the Home Department v Said* [2016] EWCA Civ 442. In the light of that decision Mr Walker submitted that the appellant was not able to meet the Article 3 threshold. However, it was accepted on behalf of the respondent that the appellant is a person who comes within [408] of *MOJ & Ors (Return to Mogadishu) Somalia* CG [2014] UKUT 00442 (IAC) in the light of his particular circumstances. Thus, it was further conceded that it would be unduly harsh to expect him to relocate to Mogadishu and that therefore the appeal fell to be allowed on Refugee Convention grounds.

Conclusions

11. In the light of the fact that the appeal on Refugee Convention grounds was conceded on behalf of the respondent, we are able to express our conclusions briefly.
12. The Skeleton argument on behalf of the appellant refers, amongst other things, to the report of Mary Harper dated 14 November 2016 in which she cites background evidence indicating that there are very few Christians and Christian converts in Somalia, with Sunni Muslims making up 99% of the population and the remainder being Shia Muslims and Christians. She refers to strong societal discrimination against Christians. Most examples of harassment and harm to Christians are related to Al Shabaab, yet she cites other information to the effect that other Somalis would shun and harass any Somali they knew to be a Christian.
13. The appellant's skeleton argument cites other background material in support of the argument that Christians are subject to societal discrimination and persecution in Somalia.
14. The FtJ found that there was a risk of persecution in other parts of Somalia but not in Mogadishu where Al Shabaab are not present and where the evidence falls short of showing that the societal discrimination amounts to persecution.
15. It is nevertheless argued on behalf of the appellant that he would be forced to lie about his religion in order to remain safe and that he would inevitably face questions if he is seen not to be practising the Islamic faith. The FtJ referred to evidence that there are no churches in Mogadishu.
16. We were directed to the appellant's witness statement dated 10 May 2019 in which he refers to his isolation from the Somali community because of his conversion, in the area of the UK where he lives. He states that he has one brother and one sister in Mogadishu and that his parents are both dead. His family in Mogadishu have rejected him because of his conversion. He states that he would be unable to find employment because no-one would employ him.
17. A psychiatric report dated 13 May 2019 from Dr Naresh Buttan, a consultant psychiatrist, states, in summary, that the appellant suffers from an Adjustment

Disorder-Mixed Anxiety and Depressive Reaction and Harmful use of alcohol (the latter diagnosis conforming to ICD10 Code: F10.10). His depression is in the moderate severity range, and with mild to moderate anxiety.

18. The report further refers to the appellant being unable to support and care for himself as he is struggling with low mood, anxiety, feelings of helplessness and worthlessness, and is socially isolated.
19. At para 407 of *MOJ & Ors*, the pertinent aspect of the country guidance for the purposes of the appeal before us says this:

“ ...

h. If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

- (i) circumstances in Mogadishu before departure;
- (ii) length of absence from Mogadishu;
- (iii) family or clan associations to call upon in Mogadishu;
- (iv) access to financial resources;
- (v) prospects of securing a livelihood, whether that be employment or self employment;
- (vi) availability of remittances from abroad;
- (vii) means of support during the time spent in the United Kingdom;
- (viii) why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.

Put another way, it will be for the person facing return to Mogadishu to explain why he would not be able to access the economic opportunities that have been produced by the "economic boom", especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.”

And then at [408]:

“It will, therefore, only be 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 a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.”

20. However, in *Said*, Burnett LJ said [28]:

“I am unable to accept that if a Somali national were able to bring himself within the rubric of para 408, he would have established that his removal to Somalia would breach article 3 of the Convention. Such an approach would be inconsistent with the domestic and Convention jurisprudence ...”

21. In the light of *Said*, the appellant is unable to succeed in this appeal on Article 3 grounds. However, it was accepted on behalf of the respondent that it would be unduly harsh to expect him to relocate to Mogadishu. The appellant has been absent from Somalia since 2010. He would have no family or clan associations to call upon in Mogadishu in the light of his conversion to Christianity. He would have no access to financial resources, and the prospects of his securing a livelihood, whether that be employment or self employment, are poor given his lack of connections and his mental state. He would not have available any remittances from abroad.
22. The question of whether the appellant would actually be at risk of persecution in Mogadishu as a Christian convert was not pursued on behalf of the appellant in the light of the respondent's concession that his appeal succeeded on Refugee Convention grounds in terms of the undue harshness of internal relocation.
23. Accordingly, we allow the appeal on Refugee Convention grounds on the basis that it would be unduly harsh to expect the appellant to relocate to Mogadishu, he having a well-founded fear of persecution in his home area on account of his religion.
24. We have not found it necessary to explore the issues arising in *HJ (Iran) v Secretary of State for the Home Department (Rev 1)* [2010] UKSC 31 in terms of whether the appellant would live discreetly as a Christian, given that his conversion is already known to his family and would in any event be discovered in his failure to practise the Islamic faith.
25. Similarly, neither party took us to any of the well-known authorities on the meaning of undue harshness in the context of internal relocation, there being no dispute but that the appellant's circumstances would fall within that concept on return.
26. As regards Article 8, it was agreed on behalf of the appellant that it was not open to him to argue that his appeal should succeed on Article 8 grounds. We note what the FtJ said at [49] of his decision, namely that on behalf of the appellant it was not argued that his return to Somalia would breach his Article 8 rights and that the matter was not raised in the appellant's skeleton argument before the FtJ or in submissions.
27. In those circumstances, we do not need to give further consideration to Article 8. However, we should say that had Article 8 been pursued before us we consider that there would have been a powerful argument in favour of the proposition that there would be very significant obstacles to the appellant's integration on return given his personal circumstances as set out above.

Decision

28. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision having been set aside, we re-make the decision by allowing the appeal on Refugee Convention grounds.

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 his 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.

Upper Tribunal Judge Kopieczek

08/07/19