



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

Appeal Number: PA/09774/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> January 2019**

**Decision & Reasons Promulgated  
On 4<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**[L J]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Masood (Solicitor)

For the Respondent: Mr T Lindsay (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

This is an appeal against a determination of First-tier Tribunal Judge Abebrese, promulgated on 23<sup>rd</sup> October 2018, following a hearing at Hatton Cross on 6<sup>th</sup> October 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

The Appellant is a male, a citizen of Somalia, and was born on 30<sup>th</sup> October 1988. He appealed against the decision of the Respondent dated 25<sup>th</sup> July 2018, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

### **The Appellant's Claim**

The essence of the Appellant's claim is that the Appellant fears al-Shabaab, who have control of the area from which he originates, and he fears that they will want to recruit him, and that he will be kidnapped by other majority clans, because he himself is a member of the Ashraf, a minority clan. In 2015 he was captured and beaten and tortured by al-Shabaab, who wanted him to become a spy for them, as they were trying to win him over, but he was very young at the time.

### **The Judge's Findings**

The judge did not accept the Appellant's account, and did not regard him to be credible on the whole (see paragraph 37), and nor did the judge accept that the Appellant was able to escape in the manner that he claimed on a particular night in April 2015 (paragraph 38). The Appellant had remained in Somalia, even living in Mogadishu, the capital city, for two years, retaining limited contact with his wife (paragraph 39) before leaving the country. He claimed now in the United Kingdom to have an Article 8 relationship with his mother, who had secured refugee and asylum status in this country, together with some of his siblings. He had made this claim on the basis that he was living with his mother and financially supported by her, but the judge held that in order to succeed as an adult son of his mother, he had to show elements of dependency that involved more than normal emotional ties, which he could not do. So the Appellant failed on the basis of Article 8 as well. The appeal was dismissed.

### **Grounds of Application**

The grounds of application state that the judge came to wrongful conclusions as to the Appellant's credibility, and failed to properly assess the risk on return, and also made inadequate assessments in relation to the Appellant's Article 8 claim.

On 13<sup>th</sup> November 2018 permission to appeal was granted on the basis that the judge did not adequately consider the Appellant's profile against the country guidance case of **AMM [2011] UKUT 00445**, and more recently the country guidance case of **MOJ [2014] UKUT 00442**.

### **Submissions**

At the hearing before me on 3<sup>rd</sup> January 2018, Mr Masood, appearing on behalf of the Appellant, relied upon the fact that the Appellant was accepted as being a minority Ashraf clan member from Somalia. Secondly, he came from an area that was controlled by al-Shabaab. Third, he could not be returned to Somalia as a minority clan member and the case of **MOJ [2014] UKUT 00442** makes

clear why this is so, particularly as he has no close family members in Mogadishu. Fourth, he would not be able to get employment. Fifth, he would therefore end up living in an IDP camp and **MOJ** clearly states that the conditions in IDP camps are dire and violate basic fundamental human rights. Sixth, in relation to the Appellant's Article 8 rights, which were based essentially on his relationship with his mother, the judge did not apply the **Razgar** principles properly. This was a case where the Appellant had been separated from his mother when he was just aged 8 years of age, at a time when a civil war was raging through Somalia, and it was not until a further 22 years, that he was then able to reunite himself with his mother in the United Kingdom. But by that time he was an adult, and the judge had failed to take these "exceptional circumstances" into account, and had failed to properly determine the fact that there were indeed more than normal emotional ties between the mother and son, on account of their history of separation and the way in which they had eventually been finally reunited.

For his part, Mr Lindsay made it clear that **MOJ [2014] UKUT 00442** did not assist the Appellant because that made it clear that a person will only adapt in an IDP camp if he either is not in receipt of remittances from abroad, or cannot secure livelihood on return. This was an Appellant who was financially supported by his mother in the United Kingdom. Although the mother gave evidence (see paragraph 26 of the determination) to say that she would not financially support the Appellant in Somalia, the judge did not accept this as being credible (paragraph 28). Therefore, the Appellant on return to Somalia would be financially provided for by his mother.

As far as the Appellant's ability to work was concerned, in **MOJ**, the Tribunal had stated (at page 352 (paragraph 48)) that jobs had been created in Mogadishu in a booming economy and so the Appellant would be able to find work. Indeed, the judge had made a finding in this particular case that: "The Appellant in any event is an adult. He may seek employment in order to sustain himself" (paragraph 48). Second, insofar as the Appellant's Article 8 claim was based upon his dependency on his mother, it was not disproportionate to ask the Appellant to return back to Somalia, given that he had nine siblings still living in Somalia, and had a wife there as well. This was particularly given that the judge had come to the conclusion that the relationship between the Appellant and his mother did not involve more than normal emotional ties (paragraph 49). Mr Lindsay submitted that there was no error of law.

In reply, Mr Masood submitted that the country guidance case of **MOJ [2014] UKUT 00442** had not been followed. This is because paragraph 407(h) of that case lists a series of factors to be taken into account, which the judge had not gone through, and it was not enough to say that because the Appellant's mother was supporting the Appellant in the United Kingdom, she could equally do so if he was returned back to Somalia, without consideration of the factors set out at paragraph 407(h).

## **Error of Law**

I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA) such that I should set aside the decision and remake the decision. My reasons are as follows.

First, insofar as the Appellant's protection claim is concerned, the judge has not applied the strictures in **MOJ [2014] UKUT 00442**. It is true that there is a reference to this decision, but it is only a fleeting reference (at paragraph 42) and even then it is only in terms of the ability of al-Shabaab "regarding legitimate targets and people who may be of interest to them" whereby the judge states that "I am of the view that even on the lower standard the Appellant would not be a legitimate target ..." (paragraph 42). There is no consideration, against the backdrop of the factors set out at paragraph 407(h) of the country guidance case of **MOJ [2014] UKUT 00442**, in relation to the Appellant's ability to actually relocate to Mogadishu. It is not enough to say that the Appellant had lived there for two years (although his claim at the time was that he had been supported by clan members),. This is because what paragraph 407(h) of **MOJ** does is to make clear that, in circumstances where a detainee has no nuclear family or close relatives in Mogadishu to assist him in re-establishing himself on return, then it would be necessary to look at the "circumstances in Mogadishu before departure"; the "length of absence from Mogadishu"; and "family or clan associations to call upon in Mogadishu", together with five additional factors, which involved the availability of remittances from abroad to the Appellant. The judge's findings in these respects are inadequate. For example, the judge speaks in terms of probabilities, stating that "he has family still in the country and he may make efforts to contact them" (paragraph 47). This is insufficient, given that of the nine siblings that the Appellant had in Somalia, three of them are missing, according to the Appellant. In the same way, when the judge looks at the question of the Appellant's ability to get employment, the judge states: "The Appellant in any event is an adult. He may seek employment in order to sustain himself" (paragraph 48). The implicit assumption in this statement, namely that because the Appellant is an adult he would be able to seek employment, is not what the country guidance case of **MOJ [2014] UKUT 00442** is authority for.

Second, the conclusions with respect to the Appellant's Article 8 relationship with his mother are equally questionable. This is a case where the Appellant was separated from his mother at the age of 8, during the civil war in Somalia, and had only been able to reunite himself with her some 22 years later in the United Kingdom, following which he was not only just living with her, but was being financially supported by her. When the mother made her application for asylum, she mentioned the existence of her son in those applications (paragraph 27). When in 2001 she made an application on the basis of family reunion, she mentioned her son (paragraph 20 and paragraph 27). Her evidence was that the Appellant had no family in Somalia left and that three of

her children were still missing (paragraph 28). That evidence has not been properly rejected.

In addition to this, there remains the fact that the Appellant is now living with his mother and is supported by her. Although the judge refers to **Kugathas [2003] EWCA Civ 31**, he does not explain why it is that there are not here “further elements of dependency, involving more than the normal emotional ties” (paragraph 49). He simply states that dependency does not have to be economic, but the fact that it is economic does not detract from the fact that there is a dependency; if anything, it may only add to it. This is an Appellant who had been separated from his mother since 1996 and the mother gave evidence before the Tribunal about the effect of the separation on her and how this had laid heavily on her over the years (see paragraph 3(iii) of the Grounds of Appeal). The issue of dependency, accordingly, needs to be revisited, as does the question of the Appellant’s return to Mogadishu on the basis of the country guidance case of **MOJ [2014] UKUT 00442**.

### **Decision**

The decision of the First-tier Tribunal involved an error on a point of law (see Section 12(1) of TCEA 2007) such that I should aside the decision and remake the decision. I remit this matter back to the First-tier Tribunal, to be heard by a judge other than Judge Abebrese pursuant to practice statement 7.2(b) of the practice statement.

No anonymity order is made.

The appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

21<sup>st</sup> January 2019