



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

Appeal Number: PA/10637/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20 February 2019**

**Decision and Reasons
Promulgated
On 26 March 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**SM
(Anonymity Order Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Radford of Counsel

For the Respondent: Ms Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Somalia born in 2001. He appealed against a decision of the respondent made on 20 August 2018 to refuse his claim for asylum.
2. The respondent did not believe the appellant's claim that he belonged to the Ashraf clan and that Al Shabaab had killed his father in Mogadishu and

that such prompted him, in fear of further attacks, to go into hiding and to leave Somalia.

3. He appealed.

First-tier Hearing

4. Following a hearing at Hatton Cross on 2 October 2018 Judge of the First-tier Tribunal Stedman dismissed the appeal.
5. His findings are at paragraph [15ff]. In summary, the judge found that the appellant is a member of the Ashraf clan [20]. He did not, however, believe that the appellant's father, a business owner in Mogadishu, while he may have been a target for extortion was killed by Al Shabaab. There was a discrepancy between himself and his aunt as to the year of that incident.
6. Further, the judge did not believe that about a year later in fear of revenge by the appellant, he had been shot by Al Shabaab. Whilst he has a wound to his leg which is consistent with a gunshot wound, he could not say why he thought his attackers were Al Shabaab; had they feared revenge they would have acted more quickly; the injury if got in the manner claimed would have required hospital treatment. His claim of not going to hospital for fear of Al Shabaab was also not believed.
7. The judge concluded that on return the appellant "*fit and healthy,*" "*relatively industrious and confident*" would be no different "*to any other young men of his ethnicity in Mogadishu who are not targeted for any reason.*" Further, he has family to whom he can return.
8. The appellant sought permission to appeal which was refused. However, permission was granted on 18 January 2019 on reapplication to the Upper Tribunal.

Error of Law Hearing

9. At the error of law hearing before me the grounds made three points. Because it was agreed that the decision showed material error it is necessary to refer only to the first, namely that the judge failed to consider evidence given in re-examination when conducting the credibility assessment.
10. At [27] the judge stated:-

"... I found that appellant's aunt's evidence that the appellant's father had been killed in 2017 presented a clear inconsistency with the appellant's account that his father had been killed in 2014. I find this inconsistency to go to the heart of the claim. The death of the appellant's father by the Al Shabaab and the effective targeting of the family thereafter would surely have been a basic conversation point between the appellant and the

witness. I do not think that it is a minor matter. I find that it substantially detracts from the credibility of the main account."

11. The problem is that it was agreed by Ms Cunha that the judge's understanding of the evidence was incorrect. During re-examination the appellant's aunt clarified that she had only heard of the appellant's father's death in 2017, not that it took place in 2017.
12. As indicated, it is clear that the judge placed a substantial weight upon this inconsistency to the point that he stated: "*it substantially detracts from the credibility of the main account*" and goes to "*the heart of the claim*".
13. However, he failed to mention that this had been clarified at re-examination and did not even consider the re-examination evidence.
14. I agreed with parties that in failing to have regard to material evidence the judge erred.
15. In light of the importance he placed on the inconsistency such must taint his other findings including, as Ms Cunha pointed out, the availability of family in Mogadishu. It was agreed that the case must be reheard.

Decision

16. The decision of the First-tier Tribunal shows material error of law. It is set aside. The nature of the case is such that it is appropriate under Section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-tier Tribunal for an entirely fresh hearing on all issues. No findings stand. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Stedman.
17. An anonymity order is made. Unless and until a tribunal or court directs otherwise the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date 22 March 2019

Upper Tribunal Judge Conway