**Upper Tribunal**

**(Immigration and Asylum Chamber)** **Appeal Number: PA/10929/2018**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre** **Decision & Reasons Promulgated**
**On 20 March 2019** **On 25 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**O A E**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L Mair instructed by Lei Dat Baig

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Atkinson, promulgated on 29 November 2018 which allowed the Appellant's appeal on asylum and human rights grounds.

Background

3. The Appellant was born on 12 February 1994 and is a national of Somalia.

4. On 2 March 2018 the Appellant applied for asylum on the basis that he was at risk from Al Shabaab who he had refused to join; he was at risk because he was a member of a minority clan; and he was at risk because he had secretly married his wife who was a member of a majority clan and her family would kill him.

5. On 29 August 2018 the Secretary of State refused the Appellant's application.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Atkinson ("the Judge") allowed the appeal against the Respondent's decision.

7. Grounds of appeal were lodged arguing that the Judge failed to give adequate reasons why he was at risk following a family feud; failed to properly assess whether internal relocation to Mogadishu would be unreasonable.

8. On 31 December 2018 First-tier Tribunal Judge Hodgkinson gave permission to appeal on both grounds.

9. At the hearing I heard submissions from Mr Bates on behalf of the Respondent that:

   (a) He relied on the grounds.

(b) The Judge focuses on the father's death certificate but given the issues he identifies he fails to explain why he gives it any weight.

(c) In relation to internal relocation having previously accepted that the Appellant had sufficient funds to flee to Kenya and study there he failed to explain why such funding would not be available to assist him in re settling in Mogadishu.

(d) He fails to take into account that in MOJ it is noted that clan support was not of such importance as it had been previously. His clan status was irrelevant to whether he could be sent money from family members.

(e) In relation to his prospects of securing employment he had worked previously as a farm labourer, can speak Arabic and English and would be more skilled than those who remained. These were transferable skills and would assist him in finding work.

10. On behalf of the Appellant Ms Mair submitted that:

(a) She relied on her skeleton argument.

(b) In relation to credibility the Judge adopted entirely the correct approach as set out in HK v SSHD 2006 EWCA Civ 1037.

(c) The Judge then set out having found some matters to be implausible where she placed them in the context of her overall assessment.

(d) The Judge refers to the fact that the Appellant was the subject of probing questions and expanded upon his account and gave detailed responses which were pivotal to the overall assessment.

(e) The Judge recognised the frailties of the documentary evidence and thus gave it 'some weight.'

(f) The Judge bore in mind the lower standard of proof that applies in these cases and therefore the conclusions reached were open to her.

(g) In relation to Ground 2 she emphasised that while the factors set out in MOJ& Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) were clearly relevant the CG case was concerned with the risk in relation to Article 15(c) which was clearly a higher threshold than applied when the

question was whether it was *reasonable* to relocate there . The Judge had up to date background material stating that the situation was still dire and therefore the Judge in assessing the question of reasonableness erred on the side of caution.

(h) Given that the Judge had found his underlying account was credible and that included his father and brother being dead the only potential source of income was his mother whose circumstances were very modest. Having access to a one time fund to enable him to flee was different to 'on going' financial support. It was therefore not outside the bounds of reasonable findings that the Appellant had no ongoing support to enable him to have a reasonable existence in Mogadishu.

(i) The Appellant had never lived in Mogadishu and his only work experience was as a farm labourer

11. In reply Mr Bates on behalf of the Respondent submitted

(a) MOJ differentiated between either being self sufficient or having access to on going support.

(b) Not unreasonable to expect the Appellant to establish himself with some support and then become self sufficient.

(c) The Appellant used farm machinery and these skills might be transferrable

(d) Clan structure is not as important as it was.

**The Law**

12. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an

error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

> *"Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."*

**Finding on Material Error**

14. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

15. In relation to the assertion that the Judge failed to give adequate reasons as to why she accepted that the Appellant faced a real risk of harm in his home area from his wife's family I am satisfied that the Judge adopted an entirely proper approach in her assessment of the evidence. The approach she adopted was inline with the guidance given by the Court of Appeal in HK that, in many asylum cases some, even most of the Appellant's story, might seem inherently unlikely. But that did not mean it was untrue. The ingredients of the story and the story as a whole, had to be considered against the available country

evidence and reliable expert evidence, and other similar factors, such as consistency with what the appellant had said before and with other factual evidence. This is exactly what the Judge did: at paragraphs 41-44 she identifies some aspects of the Appellants account that were implausible but clearly recognised, as she was entitled to, that such events could not have occurred. She did not, again quite properly, treat these matters as determinative but moved on to consider what support there was for the Appellants case at paragraphs 46-52. The challenges to the documents he relied on the Judge found were met by the Appellant with reasonable explanations (paragraph 49) She therefore attached 'some' weight to the documents which supported his case. She looked at the background material which was also consistent with his claim and concluded looking at the evidence in the round that the Appellant had met the evidential burden of establishing his case.

16. In relation to the Judges assessment of whether it was reasonable for the Appellant to relocate to Mogadishu the Judge was making that assessment on the factual matrix he had accepted: that the Appellants father and brother were dead and they were a family of modest circumstances and he had to borrow money from his wife when they got married. While the Judge applied the guidance in MOJ without explicitly acknowledging that the test in that case related to Article 15 (c) and Article 3, recognising that there was a lower threshold in relation to reasonableness would only have assisted the Appellant. At paragraph 59 -60 she assesses all those matters which were relevant to the reasonableness of relocation: that the Appellant had no family or any other links to the city; he had only ever lived briefly in an IDP camp and returning there would not be reasonable. There was nothing in the background material to suggest that conditions in Mogadishu had improved. It was open to the Judge having accepted that his account of why he fled his home area was true to accept that further funds from his family were not available. While the Appellant had previously worked as a farm labourer I accept Ms Mairs argument that it is difficult to see how this would be a transferable skill in the urban setting of Mogadishu

17. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

> *"The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."*

18. I therefore find that while a different Judge may have reached a different conclusion the reasons given by the Judge are adequate to explain to the Respondent why he allowed the appeal.

**CONCLUSION**

19. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

**DECISION**

20. **The appeal is dismissed.**

Signed Date 21.3.2019

Deputy Upper Tribunal Judge Birrell