



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

Appeal Number: RP/00018/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 February 2021**

**Decision & Reasons Promulgated  
On 2 March 2021**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AA**

Respondent

**Representation:**

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer

For the Respondent: No appearance

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing AA's appeal against the respondent's decision to deport him from the UK and to refuse his protection and human rights claim.

2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and AA as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant, whose date of birth is given as 1 January 1975, is a citizen of Somalia from Mogadishu and is a member of the Ashraf minority clan. He arrived in the UK on 23 May 1995 using a Kenyan passport and claimed asylum. His claim was refused but he was given exceptional leave to remain until 15 November 1996 and was subsequently recognised as a refugee on 10 July 1998 and granted leave until 15 November 1999. On 18 July 2000 he was granted indefinite leave to remain as a refugee.

4. Between 7 March 2001 and 15 February 2016 the appellant was convicted of 44 offences in the UK. On 6 March 2013 he was convicted of making false representations and was sentenced to six weeks imprisonment; on 16 October 2014 he was convicted of driving offences, fraud, theft and failing to surrender to custody and was sentenced to 23 weeks imprisonment; and on 15 February 2016 he was convicted of similar offences and was sentenced to 26 weeks imprisonment.

5. On 7 March 2016 the appellant was sent a notice of liability to deportation under section 3(5)(a) of the Immigration Act 1971, to which he responded on 18 March 2016, giving reasons why he should not be deported, relying upon his parental responsibilities to his four children, and claiming to be gay. On 11 May 2016 the respondent notified the appellant of the intention to cease his refugee status and again invited him to make comments or representations. The appellant made representations on 18 May 2016, referring again to his sexuality. On 25 May 2016 the UNHCR was notified of the intention to cease the appellant's refugee status and they responded on 15 June 2016.

6. On 13 December 2016 the respondent made a decision to deport the appellant and to refuse his protection and human rights claim. The respondent noted the appellant's claim that he had realised that he was bisexual in 2002 or 2003 and could not come to terms with it. His girlfriend was pregnant at the time. He had one affair with a man in 2003, 2004, or 2005 and then had a relationship with another man, MO, in 2007, which lasted a year, at a time when he was raising his children and had a girlfriend. MO was killed by Al-Shabaab when he returned to Somalia to visit his mother and since then he had had no other homosexual relationships. He smoked heroin as it prevented him from feeling sexual. The respondent did not accept that the appellant would be at risk from Al-Shabaab and did not accept that he was gay or bisexual. The respondent, relying on the findings in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442, considered that the security landscape of Somalia had much improved since he was granted refugee status and that he could return to Mogadishu without being persecuted due to his minority clan membership. The respondent considered that the appellant could no longer, because the circumstances in connection to which he was recognised as a refugee had ceased to exist, continue to refuse to avail himself of the protection of his nationality and therefore decided to cease his refugee status in view of the fact that Article 1C(5) of the Refugee Convention and paragraph 339A(v) of the immigration rules applied. It was not accepted that he was at any risk on return to Somalia.

7. With regard to Article 8, the respondent noted that the appellant had not produced any evidence of his four children, but that there was evidence that they had been taken into care by social services. It was not accepted that he had a genuine and subsisting parental relationship with his children and it was not accepted that it would be unduly harsh on the children if he was deported from the UK. The respondent noted that the appellant was no longer in a relationship with his partner. He therefore did not meet the requirements of paragraph 399 of the immigration rules. With regard to paragraph 399A, he had been lawfully resident in the UK for most of his life, but it was not accepted that he was socially and culturally integrated in the UK and it was not accepted that there would be very significant obstacles to his integration into Somalia. The respondent considered there to be no very compelling circumstances outweighing the public interest in his deportation and concluded that his deportation would not breach his Article 8 rights.

8. The appellant appealed against that decision. His appeal was initially heard by Judge Chana in the First-tier Tribunal, where he gave oral evidence, and was dismissed in a decision promulgated on 18 April 2017. However that decision was set aside by consent in the Upper Tribunal and the case was remitted to the First-tier Tribunal to be heard afresh.

9. The appeal then came before First-tier Tribunal Judge Veloso on 8 January 2020. The appellant did not appear at the hearing and neither was there any appearance by a legal representative on his behalf. There had been two previous case management review hearings which the appellant had failed to attend and it was noted that there was no known current address for him. The notice of hearing had therefore been sent to his last-known address and Judge Veloso therefore proceeded to hear the appeal in his absence, with submissions from the respondent.

10. The judge did not accept that the appellant was bisexual and did not accept that he had a fear of persecution in Somalia on the basis of his sexuality. The judge, however, noted that the appellant's initial asylum claim which had led to the grant of refugee status had not been solely based upon his minority clan status but was also based upon his involvement with the Somali Banadire Movement Front (SBMF) which the respondent had failed to consider. She accordingly found that the respondent had failed to discharge the burden of proving that the circumstances in connection to which he had been recognised as a refugee had ceased to exist. The judge noted that since the appellant's case had been remitted to the First-tier Tribunal he had been convicted on 21 July 2018 of possession of heroin and she noted that according to the OASys report, he had been addicted to heroin and cocaine for over ten years and had been homeless for six years. On that basis, and given that the appellant would be returning to Mogadishu without any connections or support from family members, without any financial assistance and that the evidence suggested that he was unable to take care of himself, the judge concluded that he would face living difficulties amounting to serious harm in breach of Article 3. The judge accordingly allowed the appeal on protection and human rights grounds.

11. The respondent sought permission to appeal to the Upper Tribunal on the grounds that the judge's reasons for rejecting the Secretary of State's case for cessation were wholly inadequate and failed to follow the approach in The Secretary of State for the Home Department v MA (Somalia) [2018] EWCA Civ 994 and the guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442; that the judge's Article 3 findings were unsustainable in the light of MA Somalia and Secretary of State for the Home Department v Said [2016] EWCA Civ 442; and that the judge's reliance upon an outdated OASys report to speculate upon matters was arguably perverse.

12. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal, but was subsequently granted, on a renewed application, by the Upper Tribunal on 10 March 2020. The matter then came before me.

13. Again there was no appearance by the appellant. I discussed at length with Ms Cunha the record of his address and whether there was any unfairness in the appeal proceeding in his absence, particularly as it appeared that he had been without a legal representative since 20 December 2017. The most recent record Ms Cunha had was an address provided by the appellant to the police and communicated to the Home Office Criminal Casework Department on 22 November 2020, following a period of detention from 5 to 13 November 2020. I noted that that was the same address held by the Tribunal and that the Notice of Hearing for today's hearing had been sent to that address. I also noted that that was the address to which the previous notices, decisions and directions had been sent, including and following the hearing before First-tier Tribunal Judge Veloso, and that the appellant would accordingly be aware that his appeal had been allowed and that the decision allowing the appeal had been challenged by the respondent. In the circumstances, it seemed to me that the Notice of Hearing had been properly served on the appellant and that there was no unfairness in proceeding to hear the appeal in his absence.

14. Ms Cunha then made submissions before me, relying upon the grounds of appeal prepared by Mr D Clarke. She submitted that the judge had given no proper reasons for concluding that the respondent had failed to show that the circumstances in connection to which the appellant had been recognised as a refugee had ceased to exist, in particular since there was no evidence that the appellant had had any involvement with the SBMF for over 25 years. The judge failed to consider the appellant's current circumstances and any risk on return on that basis, in accordance with the 'mirror image' approach in The Secretary of State for the Home Department v MA (Somalia) [2018] EWCA Civ 994. Ms Cunha also relied upon the case of Secretary of State for the Home Department v KN (DRC) [2019] EWCA Civ 1665 in that respect, in so far as it endorsed the findings in The Secretary of State for the Home Department v MM (Zimbabwe) [2017] EWCA Civ 797.

15. Ms Cunha submitted further that the judge, in making her findings on Article 3, failed to have regard to the approach to the question of destitution in Said, as endorsed in MA (Somalia), and to the high threshold to be met in such cases. Finally, the judge's findings were perverse in that she relied upon a four year old OASys report and speculated from that report on the appellant's

current circumstances without there being any evidence from him, and made assumptions which were not based upon the evidence.

## **Discussion**

16. I find myself in agreement with the respondent's grounds of appeal and Ms Cunha's submissions. I agree that the judge's findings and conclusions on the issue of cessation of refugee status were inconsistent with the approach set out in MM, MA and KN, as relied upon by Ms Cunha. When concluding that the respondent had failed to show that the circumstances in connection to which the appellant had been recognised as a refugee had ceased to exist the judge relied, at [28], upon the appellant's involvement with the SBMF over 25 years ago as being an additional and determinative factor beyond his membership of a minority clan. However the judge did not assess the appellant's current situation in that regard and provided no basis for concluding that that would remain a risk factor under the country guidance in MOJ. The judge therefore failed to consider material matters and misdirected herself in law, and her conclusion in relation to the issue of cessation is accordingly unsustainable.

17. I am also in agreement with the challenge to the judge's findings on Article 3, which made assumptions and speculated upon the appellant's current circumstances on the basis of an outdated OASys report and in the absence of any evidence from the appellant. As Ms Cunha properly submitted, the judge gave no weight to the respondent's submissions in regard to financial assistance available to the appellant on return to Somalia through the facilitated return scheme, at [43], failing to consider that he had not sought to make any such application. Furthermore, the judge's conclusions on Article 3 in relation to destitution took no account of the cases of Said and MA (Somalia), as elaborated upon in the respondent's second ground, and the high threshold to be met in such cases.

18. For all these reasons I agree with Ms Cunha that the judge's decision must set aside in all respects. Ms Cunha submitted that the judge's errors were such that they infected all of her findings and that no findings, including those on the appellant's sexuality, could be preserved. She requested that the case be remitted to the First-tier Tribunal to be decided afresh and I consider that that is the appropriate course.

## **DECISION**

19. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Veloso.

### **Anonymity**

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Dated: 11 February 2021