Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003777

First-tier Tribunal No: PA/51542/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued
On: 13 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

Z.N.I.
ANONYMITY ORDER MADE

Respondent

Representation:
For the appellant: Mr Rene, Counsel, instructed by JDS Solicitors
For the respondent: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 4 August 2023

DECISION AND REASONS

1. Mr Z.N.I, a citizen of Somalia, appeals against the decision of the First-tier Tribunal dismissing his protection appeal.

Anonymity

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) as this is a protection appeal, I make an anonymity order.

Background

3. The appellant entered the UK on 26 October 2020 and claimed asylum. On 19 March 2021 the respondent refused that application.

4. Judge of the First-tier Tribunal Farrelly ('the judge'), heard the appellant's appeal on 2 March 2022 and in a decision promulgated on 5 April 2022 dismissed the appellant's appeal on all grounds.

5. Permission to appeal was granted by the Upper Tribunal with all grounds arguable. The appellant argued that the judge misdirected himself by failing to take account of all material facts, particularly that the appellant's family are in the UK, the Netherlands and the USA and that the appellant had stated that he had no support network in Somalia. The appellant's mother lives with the appellant and it was argued that the judge had not adequately addressed these factors in his consideration of Article 8. It was argued that the judge had erred in his proportionality assessment as well as in concluding that Article 8 was not engaged.

6. Secondly, it was argued that the judge erred at paragraph [26] including in his findings that 'with the influx of people into Mogadishu and its expansion he would be able to remain there' which it was argued was speculative and that the judge erred in not making a finding as to whether it would be unduly harsh for the appellant to relocate. The appellant further relied on his grounds before the First-tier Tribunal including that it was argued that the judge had failed to consider the country guidance of OA (Somalia) (CG) [2022] UKUT 00033(IAC). The judge had appeared to accept that the appellant was approached by Al Shabaab who tried to recruit him and the appellant relied on 5.2.12 CPIN in relation to ongoing forced Al Shabaab recruitment. It was also argued that the judge had failed to properly apply MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) and had failed to take into account the appellant's circumstances on return.

Discussion

7. The matter came before me. Both representatives made submissions and at the end of the hearing I reserved my decision. I have reminded myself of the authorities which set out the distinction between errors of fact and errors of law and which emphasise the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges. This was summarised by Lewison LJ in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] as follows:

"i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it. iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

Ground 2

8. As ground 2 was the primary ground relied on by Mr Rene, I consider it first. It was the central argument advanced by Mr Rene that the judge's findings on risk on return were inadequate. It was Mr Rene's case that the judge's failure to specifically cite the country guidance case of OA (Somalia) meant that there had not been anxious scrutiny of the appellant's case and the risk on return, particularly in light of the respondent's acceptance in the Reasons for Refusal letter at paragraphs 53 and 64 that the respondent's 2020 Country Policy and Information Note, Somalia: Al-Shabaab (CPIN) that compensation is required if a person refuses to be recruited and if they refuse a person will have to flee otherwise Al Shabaab will locate them and execute them. It was submitted that this had to be considered in light of the judge's findings that he accepted that it was possible that Al Shabaab had tried to recruit the appellant.

9. I take into account that the judge accepted (at paragraph [23]) that it was possible that Al Shabaab had tried to recruit him in 2018 with the appellant's explanation being that they thought he could provide information about customers in the restaurant where the appellant worked.

10. The judge, at paragraph [12] set out the documents he had before him (and as Mr Rene conceded the documents included the appellant's skeleton argument which set out the country guidance caselaw including OA (Somalia)). The judge also clearly took into account the 2020 CPIN referred to above, noting that the 2020 CPIN stated that individuals without a government or international profile or link were unlikely to be at risk of persecution. The judge further set out that MOJ & Ors provided that there was no real risk of forced recruitment for civilian citizens of Mogadishu.

11. Having accepted that the appellant may have been targeted in 2018 for recruitment by Al-Shabaab the judge went on to find (such is not disputed) that the appellant never worked for Al Shabaab and that the approach by Al Shabaab was specifically on the basis that he might have been able to provide them with information of use about his (restaurant) customers. The judge went on to set out that there had been changes in the country situation since 2018 and found specifically at [25] that:

    'I find it improbable that they will continue to have any real interest in the appellant. He would not be in a position to provide them with any information given the passage of time. On his account he was approached by a small number of men. They persisted by asking him on a total of four occasions. However, these were passing conversations which never led to any in-depth meetings .'

    The judge therefore was in terms, distinguishing the appellant's circumstances from those set out in the CPIN and referred to in the Reasons for Refusal letter, in respect of forced recruitment.

12. Whilst the judge may not have specifically cited OA (Somalia) he was not required to do so providing he applied the country guidance. Mr Rene was unable to point to any specific guidance in OA (Somalia) that the judge failed to apply (and whilst OA (Somalia) made amendments to MOJ & Ors Mr Rene did not point to any part of those amendments that were not taken into account by the judge in the appellant's case or how they might have made any material difference to the appellant's case). Mr Rene relied on headnote (ix) of MOJ & Ors which was replicated in OA (Somalia) and provides as follows:

    > *(ix)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:*
    >
    > - *circumstances in Mogadishu before departure;*
    > - *length of absence from Mogadishu;*
    > - *family or clan associations to call upon in Mogadishu;*

- *access to financial resources;*
- *prospects of securing a livelihood, whether that be employment or self employment;*
- *availability of remittances from abroad;*
- *means of support during the time spent in the United Kingdom;*
- *why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

13. The argument that the judge failed to apply anxious scrutiny to the appellant's case because OA (Somalia) was not cited, is without merit. What matters is that the judge applied the country guidance in substance.

14. The grounds and Mr Rene disagreed with the judge's reasons for dismissing the appellant's appeal; however no material error of law in that reasoning has been identified. Whilst the judge accepted that the appellant may well have been approached by Al Shabaab seeking to recruit him, in finding that he would not be at risk of persecution on return, he applied the country guidance, including that individuals without government or international profile or links are unlikely to be at risk of persecution and that there is no real risk of forced recruitment for civilian citizens of Mogadishu.

15. Whilst this guidance had to be considered in light of the judge's findings that the appellant had been targeted for recruitment, that is precisely what the judge did: at [14] the judge noted that the approaches to the appellant had been some time ago, in 2018 and the appellant never worked for Al Shabaab. In effect, the judge was indicating that the appellant would, applying the extant country guidance, be considered as a civilian and therefore would not be at real risk of forced recruitment in Mogadishu.

16. Whilst the judge accepted the previous attempts to recruit the appellant, he made sustainable findings that following 'passing conversations' with Al Shabaab, which never led to any in-depth meetings, Al-Shabaab would not continue to have any real interest in the appellant given the nature of their original interest and the passage of time. Although the judge did, to the lower standard, find some elements of the appellant's history credible, he did not accept the claimed risk on return and took into account that the appellant decided to move on from Greece despite being offered protection which the judge found did not suggest someone fleeing in great fear. Further, the judge did not accept that the appellant was under the control of agents throughout.

17. The judge made rational findings of fact on the evidence before him and gave adequate reasons for those findings and applied the law and the country guidance to those findings. It was open to the judge to find as he did that the appellant would not be at risk of persecution on return and that he could safely return to Mogadishu.

18. The renewed grounds of appeal to the Upper Tribunal took issue with the judge's finding at paragraph [26] that:

    'it would be open to the Appellant to relocate within the country. However, my conclusion is that with the influx of people into Mogadishu and its expansion he would be able to remain there.'

    Read fairly in the round, in the context of the judge's conclusion that there would be no ongoing interest in the appellant and that he would not be at risk on return there can be no material error in those findings including that the judge was primarily satisfied that the appellant could return home to Mogadishu. In light of that finding a finding on internal relocation was not required.

19. In relation to the judge's consideration of Article 15(c) and the risk of treatment contrary to Article 3 ECHR, whilst the grounds of appeal to the First-tier Tribunal argued that in light of the country guidance the judge had failed to take into account the appellant's circumstances, the judge had noted at [8] that the respondent contended that the risk to civilians did not reach the Article 15C threshold; the judge recorded at [13] that the appellant indicated that he had no family in Mogadishu. The judge also accepted at [29] that there were difficulties in Mogadishu but that episodes of violence appeared to be waning.

20. As highlighted in OA (Somalia):

    "It will 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 would be reasonable for internal relocation purposes."

21. Whilst it was not disputed that many of the appellant's extended family members live outside of Somalia, it was not the appellant's case before the First-tier Tribunal that he would be at risk of treatment contrary to Article 15C. The appellant had worked in Somalia prior to leaving and the judge clearly had in mind the country guidance including in MOJ & Ors that it will be for appellants to explain why they would not be able to access the economic opportunities produced by the economic boom. The appellant did not make that case and it was not suggested before the First-tier Tribunal that the appellant would not have access, for example, to remittances from abroad.

22. Whilst the judge may not have particularised each of the considerations in Headnote (ix) of MOJ & Ors he did, including at [29] and [34] consider and reject that this appellant would be at risk of treatment contrary to Article 15C, taking into account including that he has lived in Mogadishu most of his life and that country conditions were not such that he could not re-establish himself. In light of the appellant's particular circumstances, there was no material error in that finding.

Ground 1

23. Whilst not conceding this ground, Mr Rene, quite properly in my view, made no submissions in relation to Article 8. The renewed grounds of appeal to the Upper Tribunal referenced that the appellant in his witness statement cited his lack of family members in Somalia and that the majority of family members reside in the UK and that his sisters in the UK and his mother are British Citizens. Paragraph 12 of the appellant's grounds to the First-tier Tribunal cited the judge's alleged failure to consider 'case law such as Britcits [2017] and the fact that the Appellant has emotional and psychological needs that only son (sic) is able to satisfy.'

24. Whilst I accept that the judge did not specifically cite BritCits v Secretary of State for the Home Department [2017] EWCA Civ 368 ("BritCits") the appellant's case before the First-tier Tribunal was not framed specifically in terms of the emotional and psychological requirements of his mother. I also take into account that BritCits was considered in the context of the adult dependent relative rules and that judgement referred specifically to any claimed 'emotional and psychological needs' of the parent being "verified by expert medical evidence".

25. Although there was some medical evidence for the appellant's mother produced, the judge was not pointed to any expert medical evidence verifying the appellant's mother's emotional and psychological needs, that was not the case before Judge Farrelly. Nevertheless, the judge at [30] to [33] of his decision carefully considered both private and family life.

26. The judge undertook a fact-sensitive consideration of the appellant's Article 8 case as pleaded, considering the circumstances of the appellant, his mother and his siblings, including the health of the appellant's mother and that she had other family members in the UK as well as access to state support if required. Whilst the judge took into account the help that the appellant provided to his 'still relatively independent' mother, he considered that the appellant and his mother were still 'rebuilding their relationship' having been apart for over a decade and ultimately concluded that removal of the appellant would not be a disproportionate breach of the appellant's private and/or family life.

27. Ground 1 amounts to no more than a disagreement with the judge's adequate reasons for finding that the appellant's Article 8 case was not made out.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeal shall stand.

Signed M M Hutchinson Date: 15 August 2023

Deputy Upper Tribunal Judge Hutchinson