



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-002265**  
On appeal from: HU/54719/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 29 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**HAMZA MUSA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Mansoor Fazli of Counsel, instructed by Wafi Solicitors  
For the Respondent: Ms Julie Isherwood, a Senior Home Office Presenting Officer

**Heard at Field House on 27 July 2023**

**DECISION AND REASONS**

**Introduction**

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 9 July 2022 to refuse him international protection or leave to remain on human rights grounds. He is a citizen of Somalia.
2. For the reasons set out in this decision, I have come to the conclusion that the appeal should be allowed and remitted to the First-tier Tribunal for rehearing afresh.

3. **Mode of hearing.** The hearing today took place face to face. I am satisfied that the hearing was completed fairly, with the cooperation of both representatives.

## **Background**

4. The main basis of the appellant's case is that Al Shabaab killed his father and brother, that he was detained, tortured and abused by Al Shabaab over a period of one month, and that he remains at risk from them if returned to Somalia today.
5. Following the death of her husband and her son, the appellant's brother, his mother moved to Mogadishu with the rest of the family. The appellant left Somalia in 2017, with the help of his aunt, travelling via Spain and France, in both of which he unsuccessfully claimed asylum.
6. The First-tier Judge dismissed the appeal principally because he considered the appellant's account to lack credibility, and he rejected the country expert's report (Ms Karen Reilly). The appellant complains of inadequate reasoning, in particular at [16]:

"16. I have read the [report] prepared by Karen O'Reilly and, in this context, comments concerning the plausibility of [the appellant's] account. I do not find that they assist me when I bear in mind the factors I am about to set out. I do not accept the evidence given by the Appellant concerning his brother. This was not mentioned when he gave his original accounting interview and, in my assessment, this is a matter that would have been at the foremost in his mind. Similarly, he stated that his father and his brother and died in July 2017 but now relies upon a death certificate, produced late, with a date of death for the brother given as 1 June 2017. That death certificate is dated at least five years after the event described and I find the document to be unreliable and the account concerning the brother as being fabricated. When he was asked in detail about this document he said "I tried my best and this is what I got". I do not consider that that answer assists his credibility at all. I find it is indicative of trying to produce a document, very close to the hearing, to bolster his claim."

7. Permission to appeal to the Upper Tribunal was granted on the following basis:

"2. The Judge has dismissed the appellant's appeals against refusal of his protection claim, based on a fear of persecution on return to Somalia. The Judge did not find the appellant's account to be credible, and found that he could reasonably be expected to return to Mogadishu.

3. The appellant's grounds for permission to appeal contend that that Judge has erred in the following ways:

- a. A failure to give any proper consideration to an expert report;
- b. A failure to consider risk as a failed asylum seeker;
- c. A failure to consider Article 8 ECHR;
- d. Inadequate reasons for adverse credibility findings.

4. I find that the grounds do disclose an arguable error of law in the Judge's decision. In particular, it is arguable that the Judge was required to give much deeper consideration to what was a substantial country expert report."

8. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

9. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal and a late but helpful skeleton argument from Mr Fazli.

10. The appellant contends that his account is credible and that he cannot safely relocate to Mogadishu, where the rest of his family is living. Mr Fazli was unable to say whether Article 8 ECHR had been argued before the First-tier Tribunal. There appears to be very little in Article 8 in this appeal. The same applies to ground 2: merely being a failed asylum seeker is not sufficient to establish a Refugee Convention risk in Somalia.

11. That leaves grounds 1 and 4, which I take together. At [5], the First-tier Judge recorded that he was presented with 1046 pages in the stitched bundle, many being duplicates, and that the expert report from Ms O'Reilly was added, 'shortly before the hearing', and ran to 75 pages. At [11], the decision recorded briefly the submissions made for the respondent in relation to Ms O'Reilly's report, and variations in the factual account which the appellant gave her, compared with his account in these proceedings. Ms Cleghorn, who appeared for the appellant, is not recorded as making specific submissions about Ms O'Reilly's report.

### **Conclusions**

12. The only reasoning about Ms O'Reilly's evidence is at [16] and bears repeating:

"I have read the [report] prepared by Karen O'Reilly and, in this context, comments concerning the plausibility of [the appellant's] account. I do not find that they assist me when I bear in mind the factors I am about to set out."

13. That is a clear *Mibanga* error: rather than considering the report carefully before reaching a conclusion on credibility, the First-tier Judge has applied his conclusions on credibility to the assessment of the report. He does not explain what else about Ms O'Reilly's 75-page report he accepts or rejects. I remind myself of the guidance given by the Upper Tribunal in *QC (verification of documents; Mibanga duty) China* [2021] UKUT 00033 (IAC) at (3) in the judicial headnote:

*"(3) What the case law reveals is that the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in*

*which the fact-finder goes about this task is a matter for them. As has been pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome. "*

14. On the basis of the contents of [16], I cannot be satisfied that the First-tier Judge has given legally adequate reasons for, or even proper consideration of, the O'Reilly report. The credibility findings cannot be saved and the appeal must be reheard afresh in the First-tier Tribunal.

### **Notice of Decision**

15. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal.

**Judith A J C Gleeson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 27 July 2023**