



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001917
First tier number: PA/55952/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of December 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

II
(ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Ms Renfrew

For the Respondent: Ms Cunah, Senior Presenting Officer

Heard at Field House on 2 September 2024

DECISION AND REASONS

1. The appellant, a male citizen of Somalia, appeals against a decision of the First-tier Tribunal dated 2 March 2024 dismissing his appeal against a decision of the Secretary of State to refuse him international protection dated 3 March 2022. The appellant now appeals to the Upper Tribunal.

2. Before the First-tier Tribunal and Upper Tribunal, it was agreed by the parties that the appellant is of Bajuni ethnicity; his home area is Chula, an island in Southern Somalia.

The judge did not believe the appellant's account of past events in Somalia and found that the appellant would not be at risk from Al-Shabaab and members of majority clans. He could, in any event, safely relocate to Mogadishu and would enjoy the help of family members living in Somalia.

3. The appellant claims that the judge wrongly considered that the credibility of the appellant's account of past events in Somalia was determinative of the issue of risk on return. At [7], the grounds state:

The Judge erred in failing to consider whether as a member of the Bajuni minority, the Appellant was exposed to a risk of persecution because of the severe and repetitive acts of discrimination/violence perpetrated against Bajuni people in Somalia. It was further in error for the Judge not to assess the risk of indiscriminate violence in Chula (Humanitarian Protection, Article 15(c) and Article 3 ECHR). [35],[36], [45], [48] and [49].

At [45-46], the judge wrote:

45. For all these reasons I find that the Appellant's account is not credible. Having rejected the Appellant's account, I do not accept that he has a subjective fear of persecution or serious harm and so dismiss his appeal on asylum and humanitarian protection grounds.

46. For the sake of completeness and in case I am wrong in my findings as to the Appellant's asylum claim I proceed to consider whether the Appellant can safely and reasonably internally relocate.

4. It is clear from these paragraphs that the judge has, as the appellant claims, assessed the appellant's credibility and has moved directly from finding that the appellant has no subjective fear of return (because his account is not credible) to concluding that his 'his appeal on asylum and humanitarian protection grounds' (the determination of which should include an assessment of objective risk) should be dismissed. By adopting that methodology, I find that the judge has erred in law. As Ms Renfrew showed in her oral submissions, the appellant had argued that he faced an objective risk on return which was not dependent upon his account of past events being believed.

5. Moreover, whilst the judge does consider internal flight within Somalia (in the alternative and on the assumption that his credibility findings may not be correct) he is, as Ms Renfrew submits, still addressing the wrong question. Internal flight may be relevant if it is unsafe for an individual to live in their home area. The appellant's case included a claim that he would be returned to Mogadishu (where he would be unsafe) and that he could not reach his home area (or, indeed, anywhere else) from there safely; in other words, he would not be safe in Mogadishu, from where he could not reach his home area and would not be safe elsewhere in Somalia. The judge was obliged, notwithstanding his negative credibility findings, to continue his analysis to deal with these aspects of the claim. His failure to do has left his analysis incomplete and his conclusions on the appeal unsafe.

6. Ms Cunah relied on the country guidance case *OA (Somalia) Somalia CG* [2022] UKUT 33 (IAC) arguing that earlier jurisprudence regarding minority clan membership was outdated and that the appellant could, in any event, relocate to Mogadishu with family support, as the judge found at [56] (*OA* deals with the relevance of 'guarantors' at [276]). However, that submission ignores the fact

that the appellant's family members are not in Mogadishu so could not offer him any support there.

7. Having found that the First-tier Tribunal erred in law, I have considered which of the Tribunal's findings of fact, if any, may be preserved prior to the remaking of the decision. Ground 3 challenges the judge's findings on the appellant's credibility but, although Ms Renfrew drew my attention to Ground 3, she did not make detailed submissions in respect of the judge's findings of fact. I am satisfied that the judge should have properly considered risk on return irrespective of his view of the credibility of the appellant's account. I accept that the judge's findings of fact have not been tested by detailed challenge but I consider that the only safe way of ensuring that the next Tribunal reaches a just and thorough determination of the appeal is by starting with a 'clean slate' as regards the appellant's credibility. None of the findings of fact, therefore, shall stand. There will need to be a new fact finding exercise which is better conducted in the First-tier Tribunal to which the appeal is returned for that Tribunal to remake the decision following a hearing *de novo*.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal to which the appeal is returned for that Tribunal to remake the decision following a hearing *de novo*.

Lane

C. N.

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 22 November 2024