



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00343/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 29th June 2015

Decision and Reasons Promulgated
29th July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR FAISAL YASSIN
(ANONYMITY NOT DIRECTED)

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer
For the Respondent: Mr R O’Ryan, Counsel instructed by Wilson Solicitors LLP

DECISION AND REASONS

1. The Secretary of State appeals, with permission, against the decision of First-tier Tribunal Judge Bell to allow the appeal of Mr Faisal Yassin against his deportation to Somalia. I shall for convenience refer to the parties according to their status in the First-tier Tribunal: that is to say, I shall refer to the Mr Yassin as “the appellant” and to the Secretary of State as “the respondent”.
2. The background to this appeal may conveniently be summarised as follows. The appellant left Somalia in 1994 at the age of 9 years. Having entered the United

Kingdom on the 2nd August 2002, the respondent granted him a short period of exceptional leave to remain in recognition of the fact that he was an unaccompanied minor. The appellant was not however granted any form of leave to remain in the United Kingdom following his attaining the age of majority. The respondent nevertheless did not remove him to Somalia due to the state of internal armed conflict that existed in that country at that time. On the 13th February 2014, the respondent decided to deport him. That decision was made in consequence of him being sentenced, on the 11th December 2013, to a total term of 12 months' imprisonment in respect of an offence of burglary and breaching the terms of a Restraining Order.

3. Judge Bell concluded that whilst there was no longer a situation of internal armed conflict in Mogadishu, there was nevertheless a real risk that the appellant would be destitute on return and that he thus entitled to international protection from suffering inhuman or degrading treatment in Somalia. The following is a summary of the reasons that she gave for that conclusion.
4. The appellant had left Somalia at the age of 9 and had therefore been away from that country for around 21 years. He did not have any family ties to Somalia. His only residual ties to that country were linguistic and cultural. He had had little education or experience of work. The latter was due in part to the fact that he had not had permission to work for most of the time that he was in the United Kingdom and had thus been dependent upon state benefits. Other than a possibility of "some low level sporadic support" by way of remittances from his claimed half-sister in the UK, he could not expect financial support from family members in the UK following his return to Somalia [paragraph 40]. The appellant had had problems with alcohol and depression in the past. He would return to Somalia as an 'ordinary civilian' - that is to say, he was not associated with the security forces, any aspect of government or official administration, or any NGO or international organisation - and he would not be at risk of harm simply because he had resided in Europe. Whilst the appellant had failed to establish that he was from a minority clan, it would nevertheless be difficult for him to obtain assistance from his clan in Mogadishu given the length of his absence from and lack of family ties to Somalia. These circumstances, combined with the fact that he had a criminal conviction and history of mental health problems and alcohol abuse, meant he had little prospect of securing a livelihood on return to Mogadishu. This in turn meant that there was a real possibility of him living in inhumane conditions. The appellant was therefore exempted from what would otherwise be his liability for deportation under Section 32 of the UK Borders Act 2007.
5. The Respondent's grounds of appeal are lengthy and the Appellant's Rule-24 response to them is lengthier still. They may however be summarised as follows. The essence of the Respondent's argument is that the judge failed adequately to explain why the Appellant would be unable to access either majority clan support or the economic opportunities resulting from the economic boon in Mogadishu that was noted by this Tribunal in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 [2012]. The appellant's response to this is that given his absence from Somalia for a period of over 20 years since the age of 9 years, the Tribunal was entitled to find that there would not be any "clan associations" for him to fall back upon. This finding was in keeping with the decision in MOJ & Ors, which was to the effect that return to Mogadishu is

only reasonable where an individual can expect to benefit from a meaningful nuclear and/or extended family support or clan protection mechanisms. Moreover, the Tribunal's reasoning had been supported by a detailed and complex expert report, the contents of which the Respondent had never sought to challenge.

6. It is important to remember the Country Guidance cases provide guidelines. They are not tramlines, rigidly to be applied without regard to the evidence that is before the Tribunal in the particular appeal. This is clear from the following passage in the headnote of MOJ & Ors –

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.

7. Judge Bell found – for reasons that are not in fact challenged by the Respondent – that the appellant was indeed without a nuclear family or close relatives in Mogadishu to assist him in re-establishing himself following his return to Mogadishu. She thereafter considered the considerations that were relevant to the appellant's case with reference to the specific evidence that was before her. Moreover, and contrary to the assertion that is made in both the grounds of appeal and the grant of permission to appeal, she fully explained why the appellant would face difficulties in calling upon clan associations for assistance; namely, his lack of family connections combined with his prolonged absence from Somalia. A Tribunal does not err in law simply because it chooses not 'tick-off' each and every listed consideration in a Country Guidance case. As with this case, many of those considerations overlap and/or are interlinked. What is required is for the Tribunal to have regard to all the considerations that are relevant to specific facts of the appeal, and to reach a conclusion that is properly open to it upon the evidence. I have no doubt that this was precisely what the Tribunal did in this case. I am therefore satisfied that Judge Bell did not make any error of law, whether material to the outcome of the appeal or otherwise.

Notice of Decision

8. The appeal is dismissed.

Signed

Date

Judge Kelly

Deputy Judge of the Upper Tribunal