



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

Appeal Number: RP/00094/2016

THE IMMIGRATION ACTS

**Royal Courts of Justice
On 15 May 2017**

**Determination Promulgated
On 24 May 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**FAHAD YUSUF SALAAD
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Counsel, instructed by Thompson & Co.
Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is brought by the respondent against the determination of First-tier Tribunal Judge Hodgkinson who allowed this appeal on human rights grounds. To avoid any confusion, I refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a Somali national born on [] 1996. His appeal was against the decision of the respondent on 15 July 2016 to make a deportation order against him, to cease his protection status and

refuse his human rights claim. He has been in the UK since September 2001. He obtained refugee status as the dependant of his aunt and as a member of the Benadiri minority clan. In 2008 his mother and two sisters joined him and were also granted refugee status. There now seem to be three additional siblings and his father is referred to as also being here. The appellant has amassed some eight convictions between February 2012 and February 2015; the conviction of September 2012 took account of some 33 offences.

3. The appellant's appeal came before the First-tier Tribunal on 22 February 2017. It was allowed on article 3 and 8 grounds on the basis that the appellant would have no support in Somalia, had culturally socially integrated into the UK and met all the requirements of paragraph 399A.
4. The respondent sought permission to appeal and that was granted by Designated First-tier Tribunal Judge Macdonald on 24 March 2017.

The Hearing

5. At the hearing before me on 15 May 2017, I heard submissions from the parties.
6. Mr Clarke argued that there had been inadequate reasoning by the judge for his finding that there would be no financial assistance for the appellant in the short term. He submitted that the appellant had a large family in the UK who could assist him and so, without further reasoning, the judge's finding could not stand. He referred to the head notes of MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) and submitted that the burden on the appellant had not been discharged by a lack of knowledge as to whether his family would assist him. He maintained that in order to avoid the article 3 threshold being met, only short term support was required as long term there was no reason why the appellant would be unable to find work. He relied on MOJ and submitted that returnees were viewed as having a better education and were more attractive to employers. He submitted that in considering 399A, the judge had predicated his finding of very significant obstacles on the appellant's inability to enjoy a private life in Somalia. Mr Clarke submitted that if the appellant were able to find work then he could develop a private life and that finding was unsafe.
7. Mr Clarke submitted that the appellant had immersed himself in the Somali community. He had been involved with a Somali gang and he lives as part of a large Somali family. It was not credible that he had no ties with Somali culture and language. He pointed to the fact that the appellant's mother had to be assisted with interpretation to understand English which meant that Somali was spoken at home. Even if the appellant was not a fluent Somali speaker, there was an availability of menial work and the judge should have given more

reasons for why he found that work would not be available to the appellant. The determination was unsafe and should be set aside.

8. In response, Mr Khan submitted that the judge had addressed all the issues and there was nothing to suggest that he had made errors of law. The judge found that the appellant only spoke English due to the length of time he had spent in this country and he was entitled to reach that conclusion. He had to speak to his mother with his sister acting as interpreter. He had no employment history or qualifications any employment opportunities in Somalia would only be for the educated. He was entitled to article 8 protection as well as article 3.
9. Mr Clarke was content to rely on his previous submissions. He had nothing further to add.
10. At the conclusion of the hearing I reserved my determination which I now give.

Findings and conclusions

11. The judge properly identified the issues to be resolved at paragraph 36. These were whether the cessation of protection status was lawful, whether the appellant was excluded from a grant of humanitarian protection because he constituted a danger to the community and whether his human rights would be breached by his deportation.
12. The judge considered the evidence from the UNHCR relied on by the appellant and he also considered the guidance in MOJ. For the reasons set out at 37-42 he concluded that the respondent was entitled to cease the appellant's refugee status. There has been no challenge to that conclusion by the appellant and those findings stand.
13. The second issue was addressed at paragraphs 43-47. The judge found the appellant to be a prolific offender with a propensity to re-offend and that he was therefore a danger to the community of the UK (at 47). He concluded that the appellant should be excluded from humanitarian protection. The appellant does not seek to challenge those findings, which stand.
14. The judge then turned to articles 3 and 8. He took note of MOJ specifically with regard to the issues of financial support from abroad and the opportunities for employment for returnees. He found that the appellant's family in the UK would not or could not support him in the event of his removal to Mogadishu (at 49) however he provides no reasons for reaching this conclusion. The appellant has a large family here, parents, siblings, aunt and cousins and his oral evidence that he did not know whether they would assist him does not provide a basis for a finding that they would not, particularly as they appear to have supported him for the duration of his residence in the UK. Mr Clarke is right to submit that it is a big leap from the appellant's vague

evidence on support to a conclusion that he would have no financial assistance. I find that the judge's conclusion in this respect is flawed.

15. The judge then looked at the availability of employment in Somalia. According to the guidance in MOJ, there is evidence that returnees are taking jobs from the locals and there has been an economic boom. The guidance is that it is for the person facing return to explain why he would not be able to access the arising economic opportunities. The judge found that because the appellant had lived here since childhood, he spoke no Somali. However, this does not take account of the fact that the appellant has always lived in a Somali family environment (apart from when he has been in custody) and that he had Somali friends and indeed was part of a Somali gang. Without more, the finding that he has no cultural ties to Somalia is unsustainable, given these facts. The appellant was also contradictory about whether he had no knowledge of the language or whether he had some. His claim to live with a Somali speaking mother but to have to use his sister for interpretation has not been explored at all. The simple fact of residence in the UK alone does not mean that a person only speaks English but that is the approach taken by the judge. It was on this basis that the judge concluded that the appellant would be unable to find employment. As the judge's reasoning as to language is inadequate, his finding on employment is flawed and cannot stand.
16. The judge then considered article 8 and found that because of the findings on language and employment, there would be very significant obstacles to his re-integration into Somali society. However, due to the flaws in those findings, the conclusion on article 8 is unsustainable.
17. I, therefore, conclude that the judge erred in his conclusions on articles 3 and 8. Fresh findings in that respect have to be re-made and a new decision must be made. In the circumstances, I remit the appeal to the First-tier Tribunal for fact finding and a fresh decision to be made on human rights issues only.

Decision

18. The decision contain errors of law with respect to the conclusions on articles 3 and 8 and is set aside to that extent. It shall be re-made by the First-tier Tribunal at a date to be arranged.

Anonymity

19. There was no request for the anonymity order to continue and I see no reason why it should.

Signed

A handwritten signature in black ink, appearing to read "R. Keke-E" with a period at the end. The letters are cursive and somewhat stylized.

Upper Tribunal Judge

Date: 24 May 2017