



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00133/2016

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice  
On 18 December 2017

Decision & Reasons Promulgated  
On 22 December 2017

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AD

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer

For the Respondent: Mr A Briddock, Counsel instructed by Turpin & Miller Solicitors

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. This is an appeal against the decision dated 27 September 2017 of First-tier Tribunal Judge Chohan which allowed the appellant's appeal against his deportation to Somalia.
3. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to AD as the appellant, reflecting their positions before the First-tier Tribunal.
4. The background to this matter is that the appellant was born in Somalia on 10 October 1994. He came to the UK illegally with his mother and siblings on 27 August 2002 at the age of 8. He and his family were granted refugee status on 14 October 2003. That grant was made on the basis that the family were from the Ashraf minority clan and from the Urkad area of Somalia.
5. The appellant has a prolific offending history. He was convicted on 29 December 2009 of robbery and given a 12 month referral order. On 31 October 2009 he was made the subject of a youth rehabilitation order with a supervision requirement for 6 months and his referral order of 29 September 2009 was revoked. On 14 September 2010 he was convicted of using disorderly behaviour and given a fine of £50 and subject to £85 cost. On 15 February 2011 he committed an offence while on bail using disorderly behaviour and was fined £75 with costs of £60. This litany of offending continues through 2011 until the index offence in 2014. On 6 March 2014 the appellant was sentenced to 12 months' imprisonment at a youth offender institution for affray. On 26 March 2014 he was sentenced to 6 weeks' concurrent imprisonment with a restraining order in order to protect from harassment for battery.
6. Those matters led to the respondent issuing a decision on 9 July 2015 which ceased the appellant's refugee status and found that he could be returned to Somalia. On 14 July 2015 the respondent made a deportation order against the appellant. Those two documents were served on the appellant on 20 July 2015.
7. The appellant appealed against those decisions and in a decision dated 16 November 2015 First-tier Tribunal Judge Andrew allowed the appeal as not in accordance with the law and remitted it to the respondent. The substantive part of her decision states as follows:
  - "2. It was agreed by both representatives at the commencement of the hearing this appeal should be allowed to the extent that the Decision was not in accordance with the law because the Respondent had decided to cease the Appellant's refugee status applying Article 1(c)(v) of the Convention and Paragraph 399A(v) of the Rules. In applying paragraph 399A(v) of the Rules the Respondent had erred in law as the Appellant claimed asylum in 2002 and the Respondent can only rely on the cessation clause of the 1951 Convention".
8. Notwithstanding all that had gone before and the clear intention of the respondent to deport him on 18 March 2016 the appellant offended further, being convicted of driving otherwise than in accordance with a licence, using a vehicle while uninsured and possessing a class B controlled drug. He received a sentence of £150 fine, was

disqualified from driving for twelve months and given a 12 month conditional discharge.

9. In due course, the respondent made a new decision dated 9 June 2016 in which she again ceased the appellant's refugee status and found that the appellant could be returned to Somalia without there being a breach of his human rights.
10. The appellant appealed and the matter came before First-tier Tribunal Judge Chohan on 15 September 2017.
11. Judge Chohan set his substantive reasoning in [2] and [3]:
  - "2. When the matter came before me, Ms Masih submitted that the respondent's latest decision had failed to take into account Judge Andrew's decision and therefore was flawed and not in accordance with the law. It is not clear as to why the respondent ignored the judge's decision. Mr Hussain could not shed light on the matter and having taken advice from a senior caseworker, requested that the matter be adjourned or in the alternative the matter should be sent back to the respondent. I did suggest to Mr Hussain that perhaps the decision should be withdrawn. Mr Hussain advised that as this was a deportation matter the senior caseworker did not have such authority; only the department known as CCD could make such a decision.
  3. The Tribunal has no power to remit the matter to the respondent. The Tribunal must make a decision. It is apparent that the respondent's decision is flawed and the matter has been aggravated by the fact that Judge Andrew's decision has been ignored. In the circumstances, I allow the appeal and it is a matter for the respondent as to whether or not a new decision is made. However, if a new decision is to be made then the respondent is referred to Judge Andrew's decision and the reason why it had been allowed on that occasion should be given careful attention".

The decision goes on to indicate that the "appeal is allowed to the extent above".

12. Notwithstanding the concerns of the Home Office Presenting Officer set out in paragraph 2 of Judge Chohan's decision above, the respondent appealed to the Upper Tribunal. The grounds of appeal state as follows:


"As in paragraph 2 of the previously allowed determination (also submitted with this application) confirms that status is ceased in accordance with both Article 1(c)(v) of the Refugee Convention and paragraph 399A of the Immigration Rules. Having relied on both Article 1(c)(v) of the Refugee Convention and the Immigration Rules such as referred to at paragraph 60 of the decision letter 21/09/16 it was incumbent on the FtTJ to have considered the matter substantively. Failure to do is an error in law.

Reliance is placed on the authority of *Salahadin Abdulla [2010] EUECJ C-176/08* that was also relied on at paragraph 6 of the decision letter 21/09/17 that the FtTJ should have considered. If the FtTJ was of the opinion that the guidance afforded by this authority was not relevant then he was bound to give clear reasons why this authority was not relevant. Failure to address this authority that was relied on in the decision letter amounts to an error in law".

13. At the hearing before me the parties were in agreement that the First-tier Tribunal had erred in approaching the appeal on a technical basis and not making substantive decisions on the grounds of appeal concerning whether the respondent had made a valid decision on ceasing refugee status, the Article 3 and humanitarian protection claims and the Article 8 ECHR claims. The parties were in agreement that where there were no findings of fact on any of the grounds the appeal should be set aside and remitted to the First-tier Tribunal to be re-made *de novo*.
14. The agreement reached by the parties was entirely in accord with my preliminary view of the case and so I find that a material error of law occurred such that the decision must be set aside and remitted to be re-made *de novo* on consideration of all grounds by the First-tier Tribunal.

**Notice of Decision**

15. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be re-made *de novo* in the First-tier Tribunal.
16. The appeal will be heard in Birmingham and not before FTTJ Chohan.

Signed:   
Upper Tribunal Judge Pitt

Date: 21 December 2017