



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00096/2017

THE IMMIGRATION ACTS

Heard at Bradford  
On 14 August 2018

Decision & Reasons Promulgated  
On 23 August 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

ABDULMAJID ABDI AL-AMUDI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: Ms Hashmi, Counsel

For the respondent: Mrs Peterson, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant has appealed against a decision of First-tier Tribunal ('FTT') Judge Ince dated 19 March 2018, in which his appeal against a decision dated 23 June 2017 to make a deportation order against him, was dismissed.

**Background**

2. The appellant is a citizen of Somalia. He entered the UK in 2004 and was granted refugee status in 2005.

3. On 19 July 2006 the appellant was convicted of rape and sentenced to eight years imprisonment.
4. On 12 April 2007 the appellant was issued with a notification of liability to deportation. There then followed a period in which representations were sought and made regarding the cessation of the appellant's refugee status. He was released from prison in June 2010. There then followed a further period in which there was further correspondence regarding the cessation of the appellant's refugee status. In 2014 the respondent wrote to the appellant to inform him again of the intention to cease his refugee status. Representations were sent on his behalf by JD Spicer Zeb Solicitors (who currently represent the appellant) on 21 September 2014.
5. On 14 May 2015 the appellant was convicted of possession with intention to supply illicit drugs and sentenced to 30 months imprisonment. On 11 July 2015 the appellant was notified of an intention to issue a deportation order against him but did not respond to this.
6. The appellant was released in August 2016 and shortly after this on 29 September 2016 his refugee status was revoked. The four-page letter set out detailed reasoning and ended by saying that the appellant should take advice on his position. There was no challenge by way of representations, judicial review or appeal against this decision. Once again there was no response to the respondent's decision.
7. There then followed an entirely separate decision to deport the appellant dated 23 June 2017. This focussed upon the appellant's private and family life in the UK pursuant to Article 8 of the ECHR. It was noted that the appellant's criminal offending gave rise to a very strong public interest in his deportation and there was an absence of "very compelling circumstances" over and above the relevant exceptions, particularly in light of an assessment from Hull Children's Social Care Department dated 8 May 2017 that the appellant did not have a genuine and subsisting relationship with his child or her mother.
8. The decision under appeal did not address any claim under the Refugee Convention (because no submissions were made regarding this) but attached the 29 September 2016 decision that had already been made in which refugee status was revoked.

### **FTT decision**

9. The appellant's solicitors appealed the 23 June 2017 decision to the FTT in grounds dated 5 July 2017. These grounds are generic in nature and make no specific submission that the respondent was not entitled to revoke refugee status when he did in 2016. Indeed, there is no reference to revocation or cessation in these grounds of appeal.

10. The FTT heard the appeal on 7 February 2018 but the appellant did not appear and was not represented. The FTT dismissed the appeal on Refugee Convention and human rights grounds.

### **Grounds of appeal to / submissions in the Upper Tribunal**

11. The grounds of appeal are twofold. Ground 1 submits that the FTT decision should be set aside under the relevant Procedure Rules. Ground 1 relies upon witness statements from the appellant and his solicitor. These explain the chronology of events leading to the non-attendance of the appellant and the efforts made to rectify the situation post-hearing. The appellant gave evidence before me to clarify aspects of his witness statement.
12. Ground 2 submits that the FTT erred in law in treating the appeal as “an asylum claim” and should have approached the appeal on the basis that the legal framework relevant to cessation applied.
13. At the end of her submissions Ms Hashmi sought to add a further ground – the failure to address section 72. As Mrs Peterson made clear this is wholly misconceived and, in any event, comes far too late. I did not grant permission to rely upon this additional ground given its lateness.
14. I did not need to trouble Mrs Peterson regarding grounds 1 and 2 and announced at the end of the hearing that I would be dismissing the appeal, for reasons I now give.

### **Error of law discussion**

#### *Set aside application*

15. The grounds of appeal and Ms Hashmi’s submissions wholly failed to acknowledge that the Upper Tribunal may only set aside a FTT decision pursuant to rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. This states that the Upper Tribunal may set aside a decision if
  - “(a) the Upper Tribunal considers that it is in the interests of justice to do so, and;
  - (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are-

...

  - (c) a party, or a party’s representative, was not present at a hearing related to the proceedings.

...”
16. It is very clear from the wording of the Rule 43 that in addition to one or more of the conditions in rule 32(2) being satisfied, the Tribunal must consider that it is in the interests of justice to set aside the decision.
17. I accept that the appellant and his representative were not present at the hearing for the purposes of rule 43(2)(c) but that is not the end of the matter. I therefore

invited Ms Hashmi to make submissions on why it was in the interests of justice to set aside the decision. She submitted that the appellant had made an honest mistake in not providing either the Tribunal or his solicitors with his correct address and phone number.

18. I reject the claim on the appellant's behalf that he made an honest mistake. Having considered the witness statements and the appellant's oral evidence, I do not accept that the appellant has offered a credible explanation for his failure to update his solicitors with his new address and phone number. The appellant's assertion in his witness statement that he thought his solicitors had his address is very difficult to follow when he accepts that he did not provide it to them. The appellant claims that he forgot to provide his new number. The appellant had experienced the formalities involved in two criminal trials and I reject his assertion that his mistakes were honest. He knew the importance of keeping in touch with his solicitors and failed to take reasonable steps to do so. The appellant has a history of not responding to important letters from the respondent as set out above.
19. In addition, the appellant's oral evidence was contradictory on two significant issues. First, the appellant explained in oral evidence that his solicitors had his correct address and phone number when his statement makes it clear that he had not informed them of these details and as Ms Hashmi submitted this was an "honest mistake". When I pointed out that the appellant said in oral evidence that his solicitors had his address and phone number yet the witness statements assert that they did not, she simply said that this was noted. Secondly, the appellant claimed in oral evidence that he sent a scanned copy of his address to the Tribunal from a phone shop and did not keep a copy of that email. There is no reference to this in his statement. In any event, I do not accept that the appellant emailed the Tribunal as claimed. The appellant confirmed that he had his own email address yet has provided no explanation for the failure to comply with the simple request to email the correct address to the Tribunal. I do not accept the appellant's assertion that he sent two emails to the Tribunal when the Tribunal has no record of these and the appellant has been unable to evidence those emails or properly explain the absence of the evidence.
20. I have considered the overriding objective set out in the 2008 Rules but am satisfied it is not in the interests of justice to set aside the decision, notwithstanding the appellant's failure to attend. I do not accept the appellant has provided a credible explanation for not maintaining contact with his solicitors. The Tribunal is entitled to expect such contact to be maintained in order for appellants to be treated fairly and in an orderly manner. I appreciate that there is an expectation that an appellant should participate fully in the proceedings. This appellant has demonstrated a reluctance to liaise with his own solicitors and a reluctance in the past to respond to important letters from the respondent. In any event, it is very difficult to see, even if the appellant attended the hearing, how the Article 8 outcome could on any legitimate view of his very serious offending be any different. As to the Refugee Convention, the appellant had an opportunity to make submissions in the grounds of appeal but his

solicitors submitted generic and vague submissions. If the appellant has specific submissions to make, he has the option of making a fresh claim. It follows that when all the circumstances are considered in the round, I refuse the application to set aside the FTT decision.

*Ground 2 - Approach to the Refugee Convention claim*

21. This ground is entirely misconceived. This was not an appeal against a decision to cease the appellant's refugee status. The appellant was rather appealing against the decision to refuse his human rights claim – see the 23 June 2017 decision under the sub-heading 'appeal' at [62].
22. As the grounds of appeal prepared by his solicitors make clear he appealed on the basis that his removal would breach the Refugee Convention and his human rights. I need say no more about the human rights appeal. The FTT's findings were plainly open to it and have not been challenged in these proceedings.
10. The FTT was entitled to approach the claim that the appellant's deportation would breach the Refugee Convention in the manner it has. As the FTT observed at [37] and [38] refugee status had been revoked in 2016 and since then the appellant has not suggested that his family in Mogadishu have had any problems due to their membership of a minority clan. There was no requirement upon the FTT to address cessation, when this was of historic interest only and in any event not raised in the grounds of appeal and therefore not a matter before the FTT. Ms Hashmi accepted that the grounds of appeal omit any reference to cessation or revocation. Cessation had already been addressed in the 2016 letter, in relation to which there has been no challenge by the appellant. Any claim to challenge the 2016 decision at this stage of the proceedings fails to appreciate the procedural history and, in any event, comes too late.

**Decision**

24. The decision of the First-tier Tribunal did not involve the making of a material error of law and I do not set it aside.

Signed: *UTJ Plimmer*

Ms M. Plimmer  
Judge of the Upper Tribunal

Date: 15 August 2018