



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

Appeal Number: PA/01193/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 27 August 2019**

**Decision & Reasons Promulgated
On 4 September 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**MOHAMED DAUD MOHAMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, Counsel instructed by TRP Solicitors

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lawrence promulgated on 30 April 2019 dismissing his appeal against the decision of the Secretary of State of 24 January 2019. Permission was refused by First-tier Tribunal Judge Welsh on 13 June 2019, on the basis that there were no arguable errors in the credibility findings. However, Upper Tribunal Judge Rintoul granted permission on 5 July 2019 on the brief basis it is arguable that the First-tier Tribunal erred in its assessment of the risk to the appellant as an international athlete and, in its approach to credibility as averred.
2. It is not in dispute in this case that the appellant has been an international athlete from Mogadishu and a national of Somalia, with a date of birth of 1 March 1996. He came to the UK in August 2017 and claimed asylum the following month.

3. It is accepted that he was an athlete and flag-bearer as part of the Somali Olympic team at the 2016 Olympics in Rio de Janeiro. His case is that as a result of that involvement on return to Somalia in August 2016 he began to receive some threats from Al-Shabaab. In due course he left Somalia to compete in the World Athletics Championship in London in August 2017, again representing Somalia. His case is that his family was attacked whilst he was in London as a result of his role and profile.
4. There are two essential grounds of appeal. The first is that on an assessment of the appellant's profile he ought, prima facie, be found to be a person at risk on return applying the guidance in the decision of MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC). The second ground is that the judge erred in relation to the credibility findings made by the First-tier Tribunal Judge. The first ground has more substance than the second ground and for the reasons set out below I find that the first ground is made out and in the circumstances I do not need to address the second ground in any detail.
5. I have already described the appellant's role in competing in athletics on the world stage for his country, Somalia. Reliance is placed on MOJ by both sides and I have been referred to the second paragraph of the head note which says that generally, a person who is an ordinary civilian, i.e. not associated with the security forces, any aspect of Government or official administration, or any NGO or international organisation, on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al-Shabaab or by Al-Shabaab itself as an apostate or someone whose Islamic integrity has been compromised by living in a Western country.
6. The respondent's case and the judge's findings were that the appellant does not belong to any of the groups identified as being at risk per se. Clan membership is not an issue in this case. The issue is whether, first and foremost, the appellant is a person at risk because of his profile. Reliance is placed in the grounds on an extract from the respondent's country guidance, Country Policy and Information Note: Somalia (South and Central): Fear of Al-Shabaab which states at 2.2.5:-

"Al Shabaab has targeted persons and/or institutions representing (or perceived to be supporting) the international community and the Somalia government, including members of the security forces, parliamentarians and government officials, election monitors, clan leaders who support the government, state employees and those believed to be spying for the government including Al Shabaab defectors. Such people are regarded as legitimate targets by Al Shabaab".
7. There is no real dispute between the two sides that the "ordinary citizen" will not face generally a risk, and of course all that is prefaced by the word

“generally.” Mr Lindsay suggests that with reference to MOJ the categories of persons who are “ordinary citizens” is a closed category. That does not appear to be the respondent’s position in its Country Policy and Information Note which makes no such suggestion and Mr Lindsay did not say that the categories of person who might be at risk is a closed category. The information considered in MOJ and even the current information in the CPIN Security and humanitarian situation, Version 4 issued in September of 2018, is that Al-Shabaab continues to target specific groups. It is recorded there that Al-Shabaab have increased these attacks and its activity in 2017 and again further in 2018, but it is clear that they regard only certain persons as legitimate targets, so-called specific groups, persons either representing or perceived to be supporting the international community and the Somalia Government.

8. I am satisfied that the appellant’s role as an international athlete representing his country on a number of occasions, at least the Rio Olympics in 2016 and at the World Athletics Championships at the Olympic Park in August 2017 can properly be described as a person who would be perceived as supporting the Somalia Government. He represented his Government, he was called to the team on both occasions to represent Somalia, and indeed he was carrying the Somalia flag. I fail to see what clearer indication there could be of a person identifying himself with the Somalia Government than parading before the world in the 2016 Olympics waving the Somalia state flag, and despite alleged threats made to him he continued to agree to represent Somalia in a similar way by coming to the UK to compete in the World Athletics Championship the following year, running for his country; representing his country.
9. I accept that he is not a member of the Government, he is not a member of the security forces, he is not a Parliamentarian and is not a Government official. However, I am satisfied that the groups of persons who are at risk is not a closed group Mr Lindsay and the appellant’s situation is something perhaps unique (but it cannot be unique because there is at least one other person who has been granted refugee status as an international sports person from Somalia).
10. I also have to bear in mind the lower standard of proof that applies: the real risk. The appellant does not have to prove beyond reasonable doubt that he would be at risk from Al-Shabaab on return, he only has to demonstrate a real risk of doing so and I am satisfied he has demonstrated that there is such a risk by reason of his profile, whether or not he was specifically threatened, and I am satisfied that risk cannot be mitigated by a sufficiency of protection, even in Mogadishu, or by relocation. It is also relevant to note that his family allegedly left Somalia, so on return he would not have any nuclear family to turn to for support in establishing himself, and even in MOJ the court indicated that there would need to be a careful assessment of all of a person’s personal circumstances on return.
11. The appellant’s case was supported by his coach, Mr Dix and by a fellow athlete who had been granted refugee status from Somalia in the UK, and it seems unfair to me that the judge rejected the letter from Zamzam

Farah in a dismissive way, suggesting it had been written to order. It may have limited utility, but it was relevant and similarly Mr Dix's evidence indicating the appellant's credibility and genuine commitment to athletics is also relevant.

12. In all the circumstances I am satisfied that the making of the decision involved an error of law and I am satisfied that first of all that it was at the very least arguable that the appellant, because of his profile would be at risk per se, whether or not he had received threats, and on an assessment of the evidence and the submissions put to me today I am satisfied that the lower standard of proof on that issue. The appellant has demonstrated, I am satisfied, that he faces a stand-alone risk because of his profile, past and present, as an international athlete.
13. In the circumstances it is not necessary for me to address the credibility findings generally. I have already indicated that the strength of those arguments and the various submissions in the grounds, going between C and H in paragraph 4 of the grounds are of more limited weight. However, in passing it does seem to me that the judge dealt rather dismissively with the evidence supporting the appellant's credibility and, in particular, I am satisfied, having looked at the interview record, that the judge was in error to suggest that the appellant answered "I don't know" throughout his interview. Even Mr Lindsay does not pursue that, whilst pointing out that there are some answers saying "I don't know". I am satisfied that on a fair assessment of that interview the appellant said "I don't know" in appropriate places and gave explanations when asked to do so. In the circumstances if I had to go as far as looking at the credibility findings I am satisfied that those also would be flawed.
14. In all the circumstances I reach the conclusion that this decision cannot stand and must be remade by allowing the appeal on the basis of the appellant's profile as an international athlete from Somali who would be at risk on return because of that profile, which, in my view, is akin to being a government supporter or official.

Decision

15. For the reasons set out above I find the making of the decision in the First-tier Tribunal did involve the making of an error on a point of law, such that the decision should be set aside.

I set aside that decision and remake that decision in the appeal by allowing it on the basis that the appellant is by reason of his profile as an international athlete at risk per se from Al-Shabaab on return to Somalia.

No anonymity direction is made.



Signed
Upper Tribunal Judge Pickup

Dated

28 August 2019

**To the Respondent
Fee Award**

No fee is paid or payable and therefore there can be no fee award.



**Signed
Upper Tribunal Judge Pickup**

Dated

28 August 2019