



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

Appeal Number: PA/12646/2016

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice, Decision & Reasons Promulgated
Belfast
On 7 August 2019
Judgment given orally**

On 23rd August 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**KHADER [Y]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr McTaggart, instructed by BP Crawford & Co Solicitors
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Somalia against a decision by the respondent dated 31 October 2016, refusing his asylum and protection claims. These had been based on his membership of the Bandhabow minority clan.
2. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Gillespie for reasons given in his decision promulgated 28

March 2018. In a decision dated 27 December 2018 Upper Tribunal Judge Rintoul set aside the decision of the First-tier Tribunal and directed that it be re-made in the Upper Tribunal.

3. As explained by Judge Rintoul in [2] of his decision:

“2. The appellant’s case is that he is a member of the Bandhabow minority clan. His case is that he has a well-founded fear of persecution in Somalia alternatively, that, following MOJ and others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 and as he cannot return to his home area, Afgoye, his removal would be in breach of the Geneva Convention and/or that he is entitled to remain on humanitarian protection grounds.”

4. The appellant’s first asylum claim was refused in 2011. His appeal against that decision was dismissed by the First-tier Tribunal on 27 May 2011. Further submissions to the Secretary of State led to another decision which was dismissed by the First-tier Tribunal on 23 September 2014. More submissions were again made in September 2016, in response to which the Secretary of State was satisfied amounted to a fresh claim and thus giving rise to a right of appeal. As observed by Judge Rintoul in his error of law decision:

“6. At this point it should be noted that in the first decision of the First-tier Tribunal, the judge did not accept that the appellant was from a minority clan or was ever in fear of Al-Shabaab and it was unexplained why his relative in Saudi Arabia did not seek to have him join him there rather than making a trip to the United Kingdom. It was also found that he could rely upon his family in Saudi Arabia to assist him in the manner that they had enabled him to come to the United Kingdom.

7. On the next occasion the judge found, given new evidence comprising expert report and the appellant’s aunt, that he is a member of the Reer Hamar sub-clan Bandhabow as claimed, the judge finding that he could return to his home area of Afgoye and, in the alternative, that he could relocate to Mogadishu.

8. The appellant’s case is that the situation has now changed and that the uncle who lived in Saudi Arabia has now died. He provided evidence of that in the form of a certificate from the Somali Consul General in Saudi Arabia which had been obtained by a friend, Mustafa Abdi, whose father lived in Saudi Arabia who obtained the documents and had them sent by DHL to the United Kingdom. It was also said that his aunt is unable to assist him as she is reliant on benefits herself.”

5. Judge Rintoul also observed in [14]:

“14. There is in the summary at [56] to [58] any observations made about the safety or otherwise of Afgoye, merely [a] stated that it was not accepted that he could not relocate to Afgoye.”

6. The natural inference from the above is that it was accepted that the appellant could not relocate to Afgoye. The proposal was for the re-

hearing to be re-made in the Upper Tribunal today. That has not been possible because the Tribunal administration, despite receiving assurances otherwise, had not been able to provide a Somali interpreter.

7. On further exploring the aspect touched on by Upper Tribunal Judge Rintoul in [14] and the refusal letter which he referred to, Mr Diwnycz clarified the Secretary of State's position as follows. There is no Convention risk to the appellant in Afgoye; the sole issue therefore being of his return to that town and being destitute as a result. This was stated at the hearing before Judge Rintoul by the then Presenting Officer, Mr P Duffy. It seems to me therefore that the scope of this appeal is wider than that observed by Judge Rintoul in his decision.
8. Given the clarification by Mr Diwnycz of the Secretary of State's position it is necessary to decide whether the appellant would be at risk, and if so, on what basis, in Afgoye. If the answer to that enquiry is in the affirmative, the next question is whether he could reasonably relocate to Mogadishu. To my mind that would involve extensive fact-finding on two important aspects, particularly in respect of the issue of whether the appellant can be returned to Afgoye. It would be necessary for the deciding tribunal to have regard to the observations by Lord Justice Hamblen in the *Secretary of State for the Home Department v MS (Somalia)* [2019] EWCA Civ 1345, in particular his observations between [73] and [76] of his judgment as to the correct approach to be taken to consideration of whether Article 3 is made out in respect of the particular risk, and the guidance given by the Upper Tribunal in its country guidance decision in *MOJ*.
9. Accordingly, the direction of Judge Rintoul is varied; the appeal is remitted to the First-tier Tribunal for its further consideration.

No anonymity direction is made.

Signed

Date 20 August 2019

UTJ Dawson
Upper Tribunal Judge Dawson