Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00036/2017

THE IMMIGRATION ACTS

Heard at Field House
on 7 June 2019

Decision & Reasons Promulgated
on 11 June 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HASSAN [F]
(anonymity direction not made)

Respondent

Representation:
For the Appellant: Mr Lindsay Senior Home Office Presenting Officer.
For the Respondent: in person.

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Keith (as he then was) ('the Judge') promulgated on 31 December 2018 in which the Judge allowed the appellant's appeal on asylum grounds but dismissed the appeal on humanitarian protection, human rights and EEA grounds.

Background

2. Mr [F] is a citizen of Somalia born on 25 December 1981. On 8 February 2016 the Secretary of State made an order of his deportation from the United Kingdom and on 24 February 2017 refused his claim on protection and human rights grounds and revoked his refugee protection status.
3. Mr [F] is a national of Somalia who came to the United Kingdom on 22 March 2003 at which point he was granted refugee status based upon his membership of a minority clan. His wife and three children joined him in March 2006 with family reunion visas. The couple had a further child born in the United Kingdom. The Judge finds Mr [F] appears to remain married although now estranged from his wife.
4. Mr [F] has formed a relationship with a Swedish national with whom he has had three children although the Judge records a lack of clarity in relation to the nature of that relationship at [3] of the decision under challenge.
5. At the hearing before the Upper Tribunal Mr [F] indicated he wished to challenge the Judges findings regarding the nature of the changes in Somalia. There was no application by him to challenge the Judge's decision by seeking permission to appeal in time at all. There is therefore no grant of permission by a Judge of the first-Tier Tribunal or Upper Tribunal giving leave to make such a challenge. It was not considered to be in interests of fairness to allow such challenge in light of the country conditions as found; which appear to be within the range of findings available to the Judge on the evidence.
6. In relation to the protection issues the Judge's findings are summarised at [74 - 75] in the following terms:

> "74. In summary, I concluded that the situation throughout Somalia as a whole remained volatile with risks changing depending on the withdrawal of Somali government authorities. Noting the Country guidance; and also accepting that the appellant was from Mogadishu; the fact that the situation across the country as a whole is not stable, but is to be contrasted to the durable changes in Mogadishu, which were those circumstances which are relevant to the appellant, as he is from Mogadishu; I concluded that the changes that had taken place are fundamental as they relate to the appellant, as he is from Mogadishu. MS (Art 15C(5) – Mogadishu) can be distinguished as the appellant's return would not necessitate relocation – he could return to family neighbourhood in which he was brought up, regardless of wider country instability.
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> 75. In relation to humanitarian protection more widely under Article 15 (c), which was not the subject of purported cessation (the appellant had been granted refugee status rather than humanitarian protection) I accept that the nature of generalised violence separate from the issue of clan membership was not sufficiently bad, noting that the appellant was an 'ordinary citizen' within the meaning of the guide set out in MOJ. The appellant's claimed fear of generalised violence

> from Al Shabab was no more than an assertion, without his identifying any further risk factors. For the same reasons, I concluded that provided he remained in Mogadishu, the appellant would not face a real risk, to the lower evidential standard, of harm or of destitution sufficient to breach Article 3. The appellant is resourceful and would have the benefit of foreign remittances; and his (sic) medically fit to work and would, I find get employment in Mogadishu. He would not be at risk of clan violence; or discrimination at a level which might breach his rights under Article 3."

7. At [92] the Judge writes *"the appellants refugee status, predating 21 October 2004, cannot be revoked and so the appellant's appeal against that revocation succeeds. The appellant has rebutted the statutory presumption against his exclusion from protection, on the basis that he is not a danger to the community"* the latter being the Judge's conclusions in relation to the section 72 element of the claim.
8. The Secretary of State sought permission to appeal the upholding of the asylum claim which was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal on the grounds it is said to be arguable that the Judge failed to apply MA (Somalia) [2018] EWCA Civ 994.

Error of law

9. There is no viable challenge to the Judge's findings relating to the country situation within Somalia and particularly in Mogadishu. The appeal relates to the proper legal conclusions open to the Judge in light of such findings.
10. The Judge refers to the decision of the Upper Tribunal in Dang which examined the impact of the decision to revoke refugee status pursuant to paragraph 339A of the Immigration Rules. The Upper Tribunal in that case noted that Article 14 of the Qualification Directive enabled Member States to revoke, end, or refuse to renew status that was granted by that Member State to an individual pursuant to its obligations under the Qualification Directive, making it necessary to distinguish between refugee status granted pursuant to the provisions of the Directive and the Refugee Convention which exists independently of any State recognition. The Qualification Directive was not in force when Mr [F] was recognised as a refugee and, as noted by the Judge, can have no application on the facts of this case.
11. The respondent's decision revoking refugee status is made pursuant to paragraph 339A which is said to mirror the cessation clauses in Article 1C(5) of the Refugee Convention.
12. It appeared for a while therefore that if an individual was granted refugee status under the Refugee Convention prior to the introduction of the Qualification Directive the Secretary of State would have no power to revoke such a grant. This was the situation specifically addressed by the Court of Appeal in MA (Somalia) [2018] EWCA Civ 994. In giving the lead judgement Lady Justice Arden stated at [47]:

> "47. I accept that it would be inconsistent with the purposes of refugee status, whether under the Refugee Convention or the QD, if protection could be to easily ceased while a person was still in need of international protection or it was not reasonably clear that the need for it had gone. That would hardly solve the problem of persecution and displacement which those instruments are intended to address. Equally, as it seems to me, there is no necessary reason why refugee status should be continued beyond the time when the refugee is subject to the persecution which entitled him to refugee status or any other persecution which would result in him being a refugee, and why he should be entitled to further protection. There should simply be a requirement for symmetry between the grant and cessation of refugee status."

13. The Judge therefore applied the wrong test when assessing the question of whether Mr [F] was still entitled to be recognised as a refugee. The Judge properly reminded himself of the need for any changes in the place to which Mr [F] was to be returned to be durable and non-temporary which the Judge found was the case for sustainable reasons. As the Court of Appeal state the risks which entitle individuals to protection are risks which affect them personally and individually, "an individualised approach". In this case the Judge finds that those aspects which Mr [F] relied on and which entitled him to be recognised as a refugee no longer exist.
14. Refugee status is not granted by any international body such as that under the Qualification Directive by a Member State but is a status which comes into effect if an individual is able to establish he or she is suffering from a well-founded fear of being persecuted for a Convention reason and is unable or owing to such fear unwilling to avail himself of the protection of their country of nationality or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear or is unwilling to return to it. If such a well-founded fear is established a person is entitled to be recognised as a refugee. Conversely, as found by the Court of Appeal, if the circumstances which entitled a person to such a grant no longer exist that person is no longer entitled to be recognised as a refugee as they are no longer able to show they can satisfy the requirements of Article 1A of the Refugee Convention.
15. Article 1C of the Refugee Convention states that that Convention shall cease to apply to any person falling into the terms of Section A if:

> '(5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality;'

16. In light of the Judge's finding that the circumstances that related to Mr [F] have ceased to exist and that such changes that have occurred are significant and durable I find the Judge erred at [97] in finding that the appeal on asylum grounds is upheld. I find arguable merit in the Secretary of States submission that the Judge failed to apply the

guidance in MA(Somalia) which led to the Judge applying the wrong test when assessing this element of the appeal.

17. No legal error is made out in relation to the dismissal of the appeal on humanitarian protection or human rights grounds or pursuant to the EEA Regulations. Even if Mr [F] disagrees with the Judge's conclusions on those points the findings at [98 – 100] stand unchallenged.
18. In light of the above I set aside the Judges finding at [79] of the decision under challenge. I remake the decision finding that the appellant's appeal on asylum grounds is dismissed.

Decision

19. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge in upholding Mr [F]'s asylum appeal. I remake the decision as follows. The appeal on asylum grounds is dismissed.**

Anonymity.

20. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……
Upper Tribunal Judge Hanson

Dated the 10 June 2019