Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00110/2018

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 12 March 2019	**On 1 May 2019**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

AHMED MOHAMOUD AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Semega-Janneh, instructed by Dicksons Solicitors
For the Respondent: Mr A Tan, Senior Presenting Officer

DECISION AND REASONS
(given orally at the hearing of 12 March 2019)

Introduction

1. The appellant is a national of Somalia, born 30 November 1991. He entered the United Kingdom in April 2006 aged 14 years, with a family reunion visa to join his mother who had been granted refugee status here. The appellant is treated as a recognised refugee.

2. The appellant is a prolific criminal offender, the most recent offences (robbery, attempted robbery and possessing imitation firearm) leading to a sentence of eight years' imprisonment in May 2014. A further eight months' imprisonment was imposed on the same occasion for dangerous driving and failing to provide a specimen. Between September 2008 and May 2014, the appellant accrued nine convictions for 22 offences.

3. This offending behaviour ultimately led the Secretary of State to seek to deport the appellant. The appellant made representations in this regard which the Secretary of State rejected in a decision dated 13 November 2017, headed *"Decision to Refuse Protection and Human Rights Claim"*. That decision letter also notified the appellant that: (i) the Secretary of State had certified his protection application pursuant to section 72 of Nationality, Immigration and Asylum Act 2002 - it being said that the appellant is a danger to the community, and (ii) that the appellant's refugee status is revoked on the basis that there has been a durable and fundamental change in the circumstances in Somalia which led to the grant of status in the first place.

Discussion and Decision

4. The appellant exercised his right to appeal against the decisions refusing his protection/human rights claim and ceasing/revoking his refugee status. The appeal came before the First-tier Tribunal on 19 November 2018 and was dismissed in a fourteen-page decision of 27 November 2018.

5. Permission to appeal was subsequently granted by First-tier Tribunal Judge O'Garro, in a decision dated 31 December 2018. Thus, the matter comes before me.

6. It is important when analysing the grounds of appeal to ensure that when doing so one is identifying which strand of the appeal before the First-tier Tribunal that such grounds seeks to challenge. There are three pleaded grounds:

    (i) The First-tier Tribunal *"erred in giving inadequate consideration to the position of the appellant as a member of the minority Ashraf clan in Somalia and the risk he would face suffering from Bipolar disorder, lack of family ties in Mogadishu …and the dire military situation."*
    (ii) The First-tier Tribunal *"had made a finding based on the absence of any evidence to establish the appellant's mother has the financial means to support the appellant if returned to Somalia."*
    (iii) *"Insufficient evidence and consideration had been before the judge relating to the availability of the medication that the appellant uses to control his Bipolar Disorder and the possibility of doing so without a prescription."*

7. Taking these in turn. The headline submission in ground 1 is followed by a quote from the Home Office's Country Policy note of September 2018

which itself quotes from the country guidance decision in MOJ & Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC). Thereafter a quote follows from the case of MAB [2015] UKUT 00435, relating to the issue of undue harshness in the consideration of Article 8.

8. Unpacking this ground at the hearing it was evident that it was intended to challenge the decision to revoke/cease refugee status. Reliance was placed on the decision in AMA (Article 1C(5) – proviso – internal relocation) Somalia [2019] UKUT 00011, the headnote to which materially reads:

> "Changes in a refugee's country of origin affecting only part of the country may, in principle, lead to cessation of refugee status, albeit it is difficult to see how in practice protection could be said to be sufficiently fundamental and durable in such circumstances."

9. The facts of the case of AMA are quite telling because of their resemblance to the facts of the instant case, in that both appellants originate from the town of Qoryoley in Somalia and in both cases there was a proposal to remove the appellants to Mogadishu.

10. In the instant case, the First-tier Tribunal concluded (at paragraph 12(i)) that the appellant would be unable to return to Qoryoley as a consequence of that town being under the control of Al-Shabaab. It is implicit in that finding that the First-tier Tribunal accepted that there was a well-founded fear of persecution in Qoryoley or at least that there had not been a fundamental and durable change of circumstances in that area. However, the First-tier Tribunal went on to consider the position in Mogadishu, concluding at paragraph 12(v) that the country guidance decision of MOJ and Others establishes that there has been a durable change in Mogadishu and that there is now no clan violence and no clan based discriminatory treatment there, even for minority clans. The First-tier Tribunal continue by concluding that:

> "I find the case law establishes that since the appellant was granted asylum on account of his membership of a minor clan in 2006 there has been a durable change in Mogadishu and that this appellant would no longer be at risk of persecution on account of his minority clan membership in Mogadishu."

11. It is clear that the First-tier Tribunal misdirected itself in law in this regard. The correct consideration was not whether there had been a durable change in Mogadishu but whether the circumstances in the country had changed fundamentally such that the appellant was no longer entitled to refugee status. That is not a matter with which the First-tier Tribunal engaged at all. It failed to identify the nexus between the grant of refugee status based on the circumstances in Qoryoley and the relevance of internal relocation to Mogadishu.

12. However, the First-tier Tribunal's error does not avail the appellant in this appeal because it goes only to the challenge to the revocation/cessation decision. It is of determinative significance in this regard that the First-tier

Tribunal also concluded that the Secretary of State's decision to issue a certificate under section 72 of the 2002 Act should be maintained – a decision which was inevitable in light of the appellant's lengthy criminal history but, in any event, is not challenged before the Upper Tribunal.

13. The relevance of this conclusion is plain once viewed in the context of the Upper Tribunal's reported decision in Essa (Revocation of protection status appeals) [2018] UKUT 00244 (IAC). In Essa the Tribunal observed that an appeal made pursuant to section 82(1)(c) of the 2002 Act (as in the instant case) is an appeal against a decision to revoke protection status and that the only permissible ground of appeal that an appellant can pursue is that the decision breaches the United Kingdom's obligations under the Refugee Convention. The Tribunal concluded, however, that where section 72(10) 2002 Act applies (as in the instant case), there is a requirement that the appeal brought pursuant to section 82(1)(c) be dismissed, even if the only ground of appeal is made out.

14. In the instant case the section 72 certificate was maintained by the First-tier Tribunal. Following the reasoning on Essa this required the First-tier Tribunal to dismiss the appeal brought against the revocation/cessation decision. That does not mean that the appellant loses his refugee status. On the facts of this case I have found that the Tribunal erred in its consideration of whether there has been a durable change in the circumstances prevailing in Somalia. Indeed, on this issue I concur entirely with the reasoning at paragraph 50 of the decision in AMA which considered an identical scenario and concluded that the requisite significant non-temporary change of circumstances was not made out by the Secretary of State, particularly given the fact that Qoryoley is a mere 120 kilometres from Mogadishu.

15. Where does that leave the appellant? In summary, the First-tier Tribunal erred in its consideration of whether there has been a durable change of circumstances in Somalia. That error was not material however, because the First-tier Tribunal was, following the decision in Essa, bound to dismiss the appeal against the decision to revoke the appellant's refugee status. Nevertheless, on reviewing the evidence I find that the SSHD has not demonstrated that there has been a durable change of circumstances in Somalia for exactly the same reasons as were deployed by the Upper Tribunal in AMA.

16. I now turn to the second ground, which in reality is a challenge to the findings on Article 3 ECHR. On this aspect of the appeal, the burden is on the appellant and it is for the appellant to demonstrate that there is a real risk of suffering treatment which would breach Article 3 (see MA (Somalia) v SSHD [2018] EWCA Civ 994). There is no dispute that the standard in a destitution case is a high one (see Said [2016] EWCA Civ 442).

17. The First-tier Tribunal found against the appellant on this issue. There are three challenges to that conclusion. The first is a challenge to the finding that the appellant's family in the United Kingdom would provide the

necessary amount of financial support to him in Mogadishu, such that he would not be left destitute there.

18. It is submitted that there was no evidence to support the contention that the shop that the appellant's mother owns is sufficiently profitable to enable the appellant's mother to provide the necessary funds to the appellant. In this regard, the First-tier Tribunal summarised the relevant evidence at paragraph 12(vii) of its decision, concluding:

> "I find the ability of the appellant's mother to pay her children for their work in her shop suggests it is a profitable business and that she would therefore be able to provide financial assistance to the appellant when he is deported to Mogadishu. I find this conclusion is supported by the win as expressed by the appellant's mother and his brother in their written statements to provide the appellant financial support and the lack of production of any official documentation from HMRC in the UK suggesting the appellant's mother business is not profitable. "

19. I remind myself that it was for the appellant to demonstrate that the money would not be available. He could, of course, have done so by providing the necessary accounts in relation to the business. However, such evidence was not produced, and the First-tier Tribunal only had limited evidence on this issue before it. In all the circumstances I find that the First-tier Tribunal's conclusion was open to it on the available evidence.

20. The First-tier Tribunal further concluded at paragraph 12(x) that:

> "There was no evidence placed before me to suggest that the appellant's bipolar condition, controlled by medication, would prevent him from seeking or undertaking work in Mogadishu. There is therefore no reason why he would be unable to look for work in Mogadishu and benefit from the economic opportunities that have been produced by the current economic boom there, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away. The appellant would be able to provide financially for himself once he has secured employment in Mogadishu and could rely upon his family in the UK to support him until he obtains work. The appellant has received some education in the United Kingdom and completed a number of courses etc."

21. The reasoning and conclusions in this regard continue at paragraph 12(xxii), where the First-tier Tribunal initially allude to the fact the appellant's mother runs her own business, pays her sons and that she had indicated a willingness to support her son, and continue as follows:

> "…but [she claimed] she did not have the means to do so. I noted the appellant's brother advised the family would financially support the appellant in Somalia … There was no documentary evidence placed before me to suggest the …business is not profitable…I find it is highly likely this appellant's mother and siblings would be able to financially support the appellant in Somalia. I also find that this appellant produces qualifications he has obtained inside and outside prison and his work experience assisting

his mother in her shop, office work experience, in prison or just secure work."

22. It is plain that there are two alternative reasons which led the First-tier Tribunal to conclude that the appellant would have sufficient financial resources available to him in Mogadishu so as to enable him to live in conditions which do not breach the high Article 3 threshold i.e. remittances from UK based family members and the ability of to earn his own income in Mogadishu. In my conclusion, on the evidence that was available to the First-tier Tribunal, it was entitled to conclude as it did on both limbs and its findings in this regard are not irrational.

23. Turning then to the third limb of the appellant's challenge. This relates to the appellant's ability to obtain medication in Mogadishu for his bi-polar disorder. This aspect of the case was dealt with by the First-tier Tribunal in paragraphs 12(ix) and (xv) of its decision. The First-tier Tribunal concluded, having considered the available evidence, that the appellant would be able to access medication in Somalia for his bi-polar condition. The appellant asserts this finding is irrational.

24. The Secretary of State provided evidence of mental health hospitals that could be accessed by the appellant in Somalia. In particular, the Tribunal had evidence from Landinfo and the WHO on this issue. It was for the appellant to demonstrate that there is a real risk that he would not be able to access such institutions or that such institutions would not have the relevant medication available.

25. On the available evidence, the First-tier Tribunal's findings in this regard are, in my conclusion, unimpeachable. It took account of all the relevant evidence and its conclusions were far from being irrational; indeed, they are conclusions I would have come to on the same evidence. The Tribunal further concluded that the relevance of the bi-polar condition (if controlled) to the assessment of risk was negligible and that it would not prevent the appellant from seeking or undertaking work. In my conclusion, this was again a conclusion that was entirely open to the First-tier Tribunal, for the reasons given.

26. In my conclusion, when looked at as a whole the First-tier Tribunal's decision is adequately reasoned and the Tribunal reaches conclusions which were open to it on the available evidence. Given that those conclusions were open to the Tribunal on the available evidence and bearing in mind that it was for the appellant to demonstrate his case under Article 3, I conclude that the First-tier Tribunal's decision does not contain an error capable of leading to a different outcome i.e. the appeal being allowed.

27. I do of course remind myself that I have concluded the First-tier Tribunal erred in its decision on the revocation/cessation of refugee status ground but, as I have indicated, the appropriate course is nevertheless for the appeal to be dismissed following the rationale in Essa.

Notice of Decision

This appellant's appeal is dismissed.

Signed: Date: 30 April 2019

Mark O'Connor
Upper Tribunal Judge O'Connor