



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00164/2018

THE IMMIGRATION ACTS

Heard at Field House
On 28 January 2020

Decision & Reasons Promulgated
On 10 February 2020

Before

THE HON. MR JUSTICE CHAMBERLAIN
(sitting as a Judge of the Upper Tribunal)
and
UPPER TRIBUNAL JUDGE BLUM

Between

MA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Loughran, counsel, instructed by Wilson Solicitors LLP
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Parkes ('the judge'), promulgated on 28 October 2019, dismissing MA's appeal against the Secretary of State's decisions refusing his protection and human rights claim and deciding that he had ceased to qualify for refugee status. Both decisions

were set out in a letter dated 11 October 2018, though the latter was recorded as having been determined on 4 April 2018.

Background

2. MA is a national of Somalia born in April 1977. He entered the UK on 11 November 1994 with his mother and siblings to join his father, who had Indefinite Leave to Remain ('ILR') and who had resided in the UK for 31 years. On 12 December 1995, MA's mother was recognised as a refugee and MA was recognised as a refugee. The family members were each granted ILR.
3. At the time of MA's entry to the UK, it was noted that his family were from Burao, a city in Somaliland. In his application for a Home Office travel document in 1996, MA's place of birth was recorded as Burao. When he applied for a replacement travel document in 2012, the Secretary of State recorded his place of birth as Mogadishu on his biometric residence card and travel document.
4. On 24 March 2017, MA was convicted of fraudulently obtaining £72,000 over a six-year period. On 3 April 2017, he received a sentence of 20 months' imprisonment. On 19 April 2017, he was served with a notice of decision to deport and, on 6 December 2017, a notice of intention to revoke his refugee status. On 7 October 2018, a deportation order was made against MA and, on 11 October, the Secretary of State decided to refuse his protection and human rights claims, and recorded that his refugee status had been revoked pursuant to Article 1C(5) of the Refugee Convention (the 'cessation' clauses), which is given effect in domestic law by paragraphs 338A and 339A(v) of the immigration rules.
5. MA appealed the Secretary of State's decision to the First-tier Tribunal under s. 82 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

The decision of the First-tier Tribunal

6. At [16], the judge summarised the appellant's protection claim. The judge noted the appellant's claim that he was born and raised in Mogadishu, not in Burao. The appellant's fear was said to be based on his clan membership and the circumstances he would face in Mogadishu on his return in light of current country guidance. The appellant additionally relied on Article 8 to resist his deportation. The judge failed to record MA's principal claim that he feared being targeted by Al-Shabab because he was a singer in the Somali community. This claim appeared both in his statement (at paragraph 90) and in the skeleton argument Ms Loughran had prepared on his behalf for the First-tier Tribunal hearing. Whilst MA accepted that Al-Shabab were no longer in control of Mogadishu, she submitted that they still had a presence in the city and were able to carry out attacks.

7. At [18] to [21], the judge summarised the oral evidence from MA and a supporting witness. MA claimed that his friends would be unable to assist him now that he was out of prison and had a job and that some were too busy to attend the hearing. The witness indicated that the appellant's friends had sent him between £30 and £50 a month when he was in prison. The witness himself had financial problems and would not be able to continue to support the appellant.

8. In the section of the decision headed 'Discussion and Findings' the judge considered the competing claims relating to the appellant's home area in Somalia. He stated:

"In my view this is not the central point that it has been suggested. The fact is that the Appellant will be returned to Mogadishu which is where he says he is from. There is no obvious way that he could get from there to Somaliland and so this decision focuses on the circumstances there. In doing so I have had regard to the country guidance case of MOJ and the current CPIN."

9. The judge then referred to both **MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)** and the Country Policy Information Note (CPIN) and concluded that the situation in Mogadishu had not changed substantively since **MOJ** was promulgated. At [26], the judge summarised the CPIN at §2.4.10, which repeated paragraph 408 of **MOJ**. This paragraph related to returnees to Mogadishu. The Upper Tribunal found that only those with no clan or family support who were not be in receipt of remittances from abroad and who had no real prospect of securing access to a livelihood on return would face the prospect of living in circumstances falling below that which was acceptable in humanitarian protection terms. The judge noted that MA's partner and children lived in the UK, as did his mother and siblings, and that he received support from friends of Somali origin.

10. The judge noted that the appellant had a circle of friends in the UK from whom he received support and that he obtained a number of certificates whilst in prison, covering IT skills, security work and employment related themes, which were in addition to his work experience in the UK. At [28], the judge found it difficult to see how the appellant would not have the ability to obtain work in Mogadishu on return.

11. At [29] and [30] the judge stated:

"With regard to the support that the Appellant could receive I do not believe that the Appellant would not be in receipt of financial remittances from the UK. If his friends were able to assist when he was in prison there is no obvious change in circumstances that would prevent further support.

There is no evidence from the Appellant's family and I note he has a number of siblings. I do not believe that he would be totally without support from that quarter either. The number of friends and family who could support the Appellant is quite extensive and the amount of

contribution from them would not need to be large to provide him with the assistance required.”

12. At [32], the judge found that the evidence before him did not justify a departure from **MOJ** and did not show that MA would be unable to access work in Mogadishu. The judge rejected the claim that MA’s circumstances would be such as to breach Article 3. The judge stated:

“I find that the Appellant can reasonably be expected to relocate to Mogadishu and that it would not be unduly harsh for him to do so.”
13. The judge then considered MA’s family relationships with his children but concluded that his deportation would not breach the family life element of Article 8. Based on his findings relating to the international protection aspect of MA’s claim, the judge concluded that he would not face any very significant obstacles to his integration in Somalia. At [37], the judge commented that MA’s family life was limited and that there was no evidence to suggest that he had particularly strong bonds with any of his siblings or his mother.
14. The appeal was dismissed on all grounds.

The challenge to the First-tier Tribunal’s decision and the ‘error of law’ hearing

15. The first ground of appeal contends that the judge failed to make any findings in respect of MA’s claimed fear of Al-Shabab as a singer in the Somali community. The second ground contends that the failed to determine the appellant’s home area. This was relevant as it determined whether he would be treated as someone returning to Mogadishu or someone who was internally relocating to the city. The judge conflated the approach identified in **MOJ** to the position of returnees (considered at [407] and [408]) with the approach to those internally relocating to Mogadishu (considered at [425]). The third ground contends that the judge failed to undertake a careful assessment of all relevant considerations identified in [407(h)] of **MOJ**. The judge failed to consider how MA’s lack of links with Mogadishu would impact on his ability to find work and failed to consider whether the fact that his qualifications were obtained whilst in prison and the fact of his criminal record would also impact on his ability to find work. The judge failed to consider MA’s actual answers during the hearing relating to the circumstances in which he was financially supported whilst in prison, and he was not entitled, on the evidence before him, to find that MA’s family would support him. The judge also failed to consider the impact of drought when determining whether the conditions in which the appellant would find himself in Mogadishu.
16. Although the First-tier Tribunal judge who granted permission to appeal commented on the materiality of some of the arguable errors, she did not restrict the grounds that could be argued.
17. Ms Loughran relied on her grounds and a skeleton argument. She drew our attention to MA’s statement, in which he claimed that his singing at Somali

weddings and other events had been recorded. This evidence had not been challenged during the First-tier Tribunal hearing. Al-Shabab operated a strict interpretation of Islamic law and anyone who did not adhere to their ethos may risk being targeted. Ms Loughran accepted there was no evidence as to MA's prominence within the Somali community, or that other singers had been targeted, but she submitted that video recordings could be easily shared electronically and that MA's claim that he was well enough known was not challenged. Ms Loughran reiterated that it was impossible to discern whether the judge was treating Mogadishu as MA's home area or a place of internal relocation, and if the latter, he failed to apply the approach identified in **MOJ**. The judge failed to consider MA's oral explanation as to why his friends would be unable to remit funds to him in Mogadishu.

18. Mr Avery relied upon the Secretary of State's skeleton argument. Although it was accepted that the judge failed to engage with MA's claimed fear of being targeted by al Shabab as a singer, this was not material. MA was silent on the frequency of his singing or the nature of his audience and he did not claim that his singing was of a political nature. The appellant relied on a news article concerning the shooting of the Mayor of Mogadishu by Al-Shabab, but this was markedly different. There was no evidence before the judge that singers had been targeted. Without further evidence, MA's fear from Al-Shabab was fanciful.
19. The Secretary of State accepted that the judge should have made a finding on MA's place of birth, but contended that this error was not material as any error would only be to the detriment of the Secretary of State. Whether MA was returning to Mogadishu or relocating there for the first time would necessarily be covered in a holistic assessment of all the circumstances such as that undertaken by the judge. On a fair reading of the decision, the judge did consider the issue of internal relocation from [24] to [32]. The remainder of the grounds did not identify any error of law. For example, there was no reference to the drought in MA's skeleton argument prepared for the First-tier Tribunal. If the MA's friends were prepared to support him financially in prison, they were likely to do so again.
20. We reserved our decision.

Discussion

21. The Secretary of State accepts that the judge failed to engage with MA's claim that he risked being specifically targeted by Al-Shabab because he sang at Somali weddings and other venues in the UK. Ms Loughran confirmed at the 'error of law' hearing that this was the only basis for the Refugee Convention claim advanced by the appellant. It is therefore all the more surprising that this aspect of the claim was overlooked by the judge.
22. In his witness statement, MA claimed he would be at particular risk from al-Shabab because his performances were recorded. He was concerned that

religious groups would become aware of his presence in Mogadishu through circulation of the recordings and that he would be specifically targeted as Al-Shabab said they would kill all singers.

23. The Secretary of State contends that any mistake made by the judge was immaterial because the appellant could not, on any reasonable view, have succeeded on the basis he advanced. The Secretary of State notes the absence of any details as to the frequency of MA's performances or the nature of his audiences, and the absence of any evidence that the songs were of a political nature or critical of Al-Shabab. The respondent contends that it is simply fanciful that Al-Shabab would become aware of MA's presence in Mogadishu and then target him.
24. We do not consider that the error of law was immaterial in the sense that the judge would inevitably have rejected this aspect of the claim. MA's evidence relating to the recording of his performances was not challenged by the respondent at the First-tier Tribunal hearing. The evidence before the First-tier Tribunal indicated that, although Al-Shabab was no longer in control of Mogadishu, it did carry out targeted attacks. MA relied on one such attack, carried out on the mayor of Mogadishu on 24 July 2019. MA accepts that the mayor's death was different from an attack on a singer but maintains that it demonstrates that such targeted attacks do occur. The CPIN relating to Al-Shabab, dated July 2017, indicated that Al-Shabab advocated a strict interpretation of Islamic law for Somalia and was against western influence on Africa. In **AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC)**, the Tribunal considered the nature of the group and concluded that a person from an Al-Shabab area who could show that they did not genuinely adhere to Al-Shabab's ethos would have a good claim to Refugee Convention protection. Although the appellant did not produce any evidence of the recordings of his performances, we take judicial notice of the relative ease with which digital recordings, particularly those made using mobile phones, can be shared and circulated. Given the unchallenged evidence that the appellant often sang at events and that his performances were recorded, and given the evidence of continued targeted attacks in Mogadishu and the extreme nature of Al-Shabab, we cannot say that a judge, properly directing him or herself on the facts and the law, would not be rationally entitled to allow an asylum appeal on the basis advanced by the appellant.
25. This error of law requires the First-tier Tribunal's decision to be set aside. We are additionally satisfied that the judge erred in law in his assessment of the issue of remittances. In her grounds of appeal, Ms Loughran set out the appellant's oral evidence based on her handwritten record of the proceedings. The accuracy of the extract has not been disputed. The appellant stated:

"Everybody is busy helping their own family. Even today, people I asked to come to meet me and they haven't come.

[...]

When they are here I'm very close to him. Prison is near where they live. There [Somalia] I have nowhere to live, no money. How do they put effort in to pay me?

[...]

I don't think I will get assistance from anybody. They are busy covering their own businesses."

26. We accept Ms Loughran's submission that there is a potentially significant difference between the appellant's friends giving him money when he is in a nearby prison and transmitting money to him in Somalia. The judge, however, failed to consider the explanation given by MA and, although he referred to the witness's evidence concerning his own finances when summarising the oral evidence, there was no engagement with this evidence in the judge's findings.
27. Nor are we satisfied that the judge was entitled to conclude that MA would be financially supported by his family in the UK. There was no evidence that the appellant's family members sent any money to him when he was imprisoned, no family members attended the First-tier Tribunal hearing and, according to the judge, there was no evidence that MA had particularly strong bonds with any of his siblings or his mother. The judge's finding was without evidential foundation. These errors are material as access to remittances is a relevant factor when assessing whether the conditions in which MA would find himself in Mogadishu could either breach Article 3 (having full regard to **Secretary of State for the Home Department v Said** [2016] EWCA Civ 442 and **SB (refugee revocation; IDP camps) Somalia** [2019] UKUT 00358 (IAC)) or could entitle him to a grant of humanitarian protection.
28. Given our findings it is not necessary to determine further whether the judge's failure to identify the appellant's home area was itself a material error. It was accepted by the respondent that the judge should have made a finding of fact on the appellant's place of birth.

Remittal to First-Tier Tribunal

29. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:
 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

30. We have determined that the judge failed to make any findings in respect of the asylum claim advanced by the appellant or in respect of the appellant's home area, and that other findings made by the judge are unsafe. The appeal will be remitted to the First-tier Tribunal so that a new fact-finding exercise can be undertaken.

Notice of Decision

The making of the First-tier Tribunal's decision involved the making of errors on points of law and is set aside.

The case is remitted back to the First-tier Tribunal to be decided afresh by a judge other than judge of the First-tier Tribunal Parkes.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

D. Blum

7 February 2020

Signed
Upper Tribunal Judge Blum

Date