



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06929/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House
On 2 February 2021
(remote hearing)

Decision & Reasons Promulgated
On 16 February 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OS

(ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Ms Cunha, Senior Home Office Presenting Officer

For the Respondent: Ms Radford, Counsel instructed by Pickup Scott Solicitors

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

DECISION AND REASONS

1. This is an appeal by the Secretary of State. However, I will refer to the parties as they were designated in the First-tier Tribunal.
2. The appellant is a citizen of Somalia, born in 1974, who has lived in the UK since 1991, when he was 16 years old. In January 2007 he murdered his wife and was sentenced to life imprisonment with a recommendation to serve at least 13 years.
3. In July 2016 the appellant was served with a decision to make a deportation order against him in accordance with section 32(5) of the UK Borders Act 2007, subject to consideration of section 33. The appellant made a protection and human rights claim, which was refused by the respondent in July 2019. The appellant appealed to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Conrath ("the judge"). In a decision promulgated on 1 May 2020 the judge allowed the appeal. The respondent is now appealing against that decision.
4. The appellant's protection claim, in summary, is that his late wife's family, who live in the UK and Somaliland, have threatened to kill him and that his life will be at risk in Somalia from his late wife's family who will stop at nothing to exact revenge.

Decision of the First-tier Tribunal

5. Relying on a psychological assessment report by Dr McKeown and a Parole Board decision dated 15 January 2020 (but without making any reference to the OASys report) the judge found that the appellant does not constitute a danger to the community for the purposes of section 72 of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act").
6. The judge accepted the evidence of the appellant and his sister regarding threats from the appellant's late wife's family and found that the appellant would be at risk from them on return to Somalia. The judge relied on a country expert report of Mr Ingiriis. At paragraph 46 of the decision the judge quoted the following from Mr Ingiriis's report:

"Revenge remains a means of punishment to respond to present and past issues between clans, groups and individuals. Therefore, it will be a danger for a person like [OS] who committed a murder to safely return and live anywhere in Somaliland".
7. I pause to make the observation that Mr Ingiriis did not comment in his report on whether the appellant would also be at risk in other parts of Somalia, such as Mogadishu.
8. Whether the appellant would be at risk in Mogadishu was at issue before the judge (although relocation to Mogadishu is not raised in the respondent's refusal letter). At paragraph 26 of the decision the judge recorded the appellant's evidence at the hearing as being that if he were to return to Hargeysa his wife's

family would find out because it is a small community. With respect to Mogadishu the judge stated:

“He accepted that he didn’t know about Mogadishu, because he had never been there. However, he believed that the family would find out where he was, wherever he went to in Somalia”

9. The judge concluded, in respect of the appellant’s protection claim, at paragraph 48:

“I find that this appellant is still at risk on being returned to Somalia, whatever part of that country he is returned to, and I find that, because of the lack of sufficiency of protection, relocation is not an option in this case. I find that this appellant would be at risk whenever he is returned to in Somalia, including Mogadishu”.

10. With respect to article 8 ECHR, after considering the relevant sections of Part 5A of the 2002 Act, the judge concluded at paragraph 58 of the decision that there were “very compelling circumstances as to why this appellant should be allowed to remain in this country”. One of the reasons given by the judge (in paragraph 58) for finding there to be “very compelling circumstances” was that if returned to Somalia the appellant would face a risk to his life from his late wife’s family.

Analysis

11. The respondent advanced (and I heard submissions from both parties on) a wide range of arguments as to why, in the respondent’s view, the judge made several material errors of law. However, I only need to consider one of the points raised in the grounds as the error it identifies is such that the decision will need to be set aside in its entirety.
12. The error is that the judge did not give any reasons to explain his finding at paragraph 48 of the decision that the appellant would be at risk from his late wife’s family in Mogadishu. Moreover, having reviewed the evidence that was before the judge, I am unable to discern an evidential basis to support the conclusion that the appellant would be at risk from his former wife’s family in Mogadishu. The evidence of the appellant was that his late wife’s family live in Somaliland and in the UK, not Mogadishu; and the report of Mr Ingirris does not address the issue of whether the appellant’s late wife’s family would be able to locate the appellant in Mogadishu. Accordingly, I find that the judge fell into error in concluding that the appellant would be at risk in Mogadishu because (a) the conclusion was not supported by reasons; and (b) the evidence before the First-tier Tribunal did not support the conclusion.
13. This error is plainly material to the appellant’s protection claim as if the appellant would not be at risk from his late wife’s family in Mogadishu it was necessary for the judge to consider whether he could safely and reasonably relocate to Mogadishu.

14. The error is also material to the judge's article 8 assessment. This is because one of the factors weighing in the appellant's favour in the judge's article 8 proportionality assessment (at paragraph 58 of the decision) was that he would face a risk to his life from his late wife's family in Somalia. Given, in particular, the high threshold to be met under section 117C(6) of the 2002 Act and that, in accordance with 117C(2), the more serious the offence the greater the public interest in deportation, the same conclusion on proportionality might not have been reached if the judge had found that there was a part of Somalia in which the appellant could live safely.
15. Both parties were of the view that in the event I found there to be an error of law the appeal should be remitted to the First-tier Tribunal. Given that significant further fact-finding is likely to be necessary for this decision to be re-made, and that both the protection and article 8 claim will need to be considered, I agree that this is the appropriate course of action.
16. I have considered whether any of the findings of the First-tier Tribunal should be preserved. I have reached the view that they should not. This is because the assessment of whether the family of the appellant's late wife will pose a threat to the appellant in Mogadishu cannot easily be separated from consideration of the risk they pose in Somaliland (or, indeed, in the UK). I therefore have formed the view that the appeal should be considered afresh, with no findings preserved, by a different judge of the First-tier Tribunal.

Notice of Decision

The appeal of the Secretary of State is allowed.

The decision of the First-tier Tribunal contains a material error of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge with no findings preserved.

Direction Regarding Anonymity

Unless and until a Tribunal or court directs otherwise, the appellant 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.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 4 February 2021