



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002828
UI-2022-006300
First-tier Tribunal No:
RP/00028/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ABDULAHI MOHAMED ADAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J. Dhanji, instructed by Caveat Solicitors.

For the Respondent: Mr. C. Bates, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 16 March 2023

DECISION AND REASONS

1. By way of a decision promulgated on 29 December 2022, the decision of First-tier Tribunal Judge Bennett (the "Judge") was set aside. The appeal came before us to be remade.
2. It was a hybrid hearing. Mr. Bates, Mr. Dhanji and Mr. Adan attended remotely on Teams. The documents before us consisted of the digital hearing bundle (487 pages) which includes Mr. Adan's bundle ("AB"), the skeleton argument (page 427), and the Respondent's bundle ("RB").

Cross-appeal

3. As was raised at the error of law hearing, there had been a cross-appeal by Mr. Adan. In a decision promulgated on 8 February 2023 Upper Tribunal Judge Hanson granted permission on one ground only. He found that no arguable

legal error was made out in the findings relating to the section 72 certificate. However, it was arguable that the Judge had given inadequate reasons in relation to the issue of revocation of refugee status, and whether or not the provisions of the Refugee Convention continued to apply to Mr. Adan.

4. We first addressed the issue of the cross-appeal. Mr. Bates accepted that the Judge had not directly dealt with the issue of revocation of refugee status. However, he submitted that Mr. Adan had not been granted status in his own right and was therefore not a refugee under the Refugee Convention with reference to Articles 1A and 1C(5). Mr. Adan had come to the United Kingdom under the Family Reunion provisions to join his father who had been granted refugee status. He referred us to the case of JS (Uganda) [2019] EWCA Civ 1670, [68] to [71].
5. However, taking Mr. Adan's case at its highest, and treating him as a refugee under the Refugee Convention, Mr. Bates argued that in any event there had been a material change in the situation in Somalia. Taking a pragmatic approach, he stated that he was not bringing a strong challenge to the cross-appeal, but that in his submissions he would treat Mr. Adan's case at its highest on the basis that he was a refugee. He submitted in any event that the Respondent had shown that there had been a fundamental and durable change in Somalia such that the circumstances which led to a grant of refugee status had ceased to exist.
6. We then proceeded to hear submissions on the two material issues before us, revocation of refugee status, and Article 3. Mr. Dhanji confirmed that there was no reliance on Article 8. No additional evidence had been served by Mr. Adan. As there was no updated witness statement, there was no cross-examination of Mr. Adan and the hearing proceeded by way of submissions only. We reserved our decision.

Revocation of refugee status

7. It is accepted that Mr. Adan's father was granted refugee status in January 2005 on the basis that he was a minority clan member. Mr. Adan joined his father in the United Kingdom in 2010. We find that there is strong and cogent evidence that there has been a durable change in Somalia such that being a member of a minority clan is no longer a basis for a grant of asylum.
8. The applicable country guidance remains MOJ and others (Somalia) CG [2014] UKUT 00442 (IAC) and OA (Somalia) CG [2022] UKUT 00033. These cases indicate that there have been significant changes in Somalia since Mr. Adan came to the United Kingdom. Paragraph (iii) of the headnote to MOJ refers to "durable change". It states that "the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM." AMM was decided in 2011.
9. Paragraph (viii) to the headnote to MOJ states:

"The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence,

and no clan based discriminatory treatment, even for minority clan members.”

10. The durability of that change has been reinforced by the country guidance in OA, promulgated in 2022, some eight years after MOJ. Headnote (2) states that “the country guidance given in paragraph 407 of MOJ (replicated at paragraphs (ii) to (x) of the headnote to MOJ) remains applicable.” We find that circumstances have remained the same and that the change is durable.
11. We find that were Mr. Adan or his father to claim asylum now on the basis of being a minority clan member their claims would not succeed owing to the durable change which has occurred in Somalia. Being a minority clan member is no longer determinative of risk. Mr. Dhanji submitted that neither MOJ nor OA dealt specifically with Mr. Adan’s particular clan, Ya Ya Saleh, but we find that this is not significant. No distinction is made between minority clans who are all in the same position and insufficient evidence was provided before us to establish any risk for this group based upon their clan identity.
12. Mr. Dhanji referred to [7] and [8] of his skeleton. He submitted that the UNHCR disagreed with the Respondent’s view that there had been a material change in circumstances with reference to the letter from the UNHCR (page 40 RB). This letter is dated 24 October 2019. It refers to the Respondent’s CPIN Somalia: Majority clans and minority groups in south and central Somalia, January 2019. Mr. Dhanji submitted that [2.4.13] of the CPIN indicated that Mr. Adan would be at risk:

“However, minority group/clan members in Mogadishu without support networks, skills or education, and who have no real prospect of securing access to a livelihood are generally likely to face difficult living conditions that amount to serious harm or persecution.”
13. However, we do not find that Mr. Adan is in this position for reasons set out below when considering Article 3.
14. We find that the Respondent has met the burden of proof to show that the circumstances which led to the grant of refugee status to Mr. Adan’s father, and to Mr. Adan, have ceased to exist. We find that there has been a material and durable change in Somalia and that being a minority clan member is no longer a basis for a grant of refugee status.

Article 3

15. In the absence of any updated witness statement, the evidence before us consists of Mr. Adan’s witness statement dated 8 April 2022 (pages 1 to 6 AB), and the oral evidence given at his hearing in the First-tier Tribunal (recorded at [10] to [24] of the Judge’s decision). Although the Judge had already found that the appeal fell to be allowed on Article 3 grounds, Mr. Adan’s claim to be bisexual was considered and was found to lack credibility ([56] to [63]). There has been no challenge to the Judge’s finding that Mr. Adan was not bisexual. As submitted by Mr. Bates, considering it in the round, Mr. Adan’s credibility has been found lacking.
16. MOJ sets out the considerations for an individual facing return to Mogadishu at paragraph (ix) of the headnote. This is not an exhaustive list, but states as follows:

“If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

- circumstances in Mogadishu before departure;*
- length of absence from Mogadishu;*
- family or clan associations to call upon in Mogadishu;*
- access to financial resources;*
- prospects of securing a livelihood, whether that be employment or self employment;*
- availability of remittances from abroad;*
- means of support during the time spent in the United Kingdom;*
- why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

17. Paragraphs (x) and (xi) further state:

“Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.

It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.”

18. OA then provided further country guidance “which goes to the assessment of all the circumstances of a returnee’s case as required by MOJ”. We have carefully considered Mr. Adan’s personal circumstances, and first we turn to those issues which were addressed by the parties before us.

19. We find that Mr. Adan has not shown that he has lost contact with his family in the United Kingdom. He has provided no further evidence to address the issue of family support in the United Kingdom, or lack of it.

20. Mr. Adan has a father and three siblings in the United Kingdom. At [7] of his witness statement Mr. Adan stated that he did not speak to his father. The Judge found that his father had severed ties with Mr. Adan due to his use of alcohol and drugs. However, Mr. Adan did not state in his witness statement that he did not speak to his two brothers and sister. He said that it was hard for his siblings to support him “financially”, but he did not state that they had provided no other forms of support [4]. There is no evidence to suggest that his

siblings disowned him due to his alcohol and drug use. We find that there is insufficient evidence that his other family members have disowned him for any other reason. There is no evidence that they had disowned him due to being bisexual, a claim which in any event has been found to lack credibility.

21. Mr. Dhanji referred to the OASys report which indicated that a motivation for his offending was due to “feeling isolated from support” (page 112 AB). He also referred to the section of the report which addresses the circumstances likely to increase risk (10.3 page 116 AB). One of these is that “Mr. Adan is likely to be homeless or unstably accommodated”. It was submitted that this indicated a lack of family support in the United Kingdom. However, we find that “feeling isolated from support” was at the time of his offence, January 2020. Following his release we find that he has had contact with his family. At Q8 of his asylum interview which was conducted in June 2021 he said that his brother would sometimes visit him in Bristol (page 25 AB).
22. Further, as referred to in our error of law decision, one of Mr. Adan’s brothers had been intending to give oral evidence in support of his appeal in the First-tier Tribunal. It is not clear whether this is the same brother who would visit him in Bristol, but it is further evidence of contact with at least one brother. Mr. Adan has failed to explain how, if he had no support from him, his brother would have been willing to come to his appeal.
23. We find that Mr. Adan has contact with family in the United Kingdom. It has not been shown they will not be able to support him with remittances from abroad, even if these are not significant sums. As stated in the error of law decision, the statement by Mr. Adan that his family members would not travel to Somalia as they may lose their British citizenship had not been shown to have arguable merit.
24. In relation to family in Somalia, we find that Mr. Adan has not made out his claim that he would not be able to locate his mother in Somalia. We have no updated evidence of any attempts that he has made to find her. At Q4 of his asylum interview he said that his mother was in Somalia (page 23 AB). He had not spoken to her for a long time and said “she might have moved elsewhere”. However he has provided no explanation for why he believes that she has moved elsewhere. He has provided no evidence to show that he has any information to suggest that she is no longer in Somalia. As we stated in the error of law decision, it is speculation on the part of Mr. Adan to state that he will not be able to locate her.
25. We further find that Mr. Adan has not provided any explanation for why he lost contact with his mother immediately on leaving Somalia. The Judge had “considerable doubts” that he left Somalia without any means of communicating with her, and found that this did not “sit happily” with his evidence that he lost contact when he was at college [50]. It is recorded at [18] of the Judge’s decision that Mr. Adan gave oral evidence that “when he started going to college, he never contacted her and she never contacted him. He has not tried to contact her. There is no reason for this.” We have no further evidence addressing why he has not tried to contact her.
26. The headnote to QA states at [5]:

“Somali culture is such that family and social links are, in general, retained between the diaspora and those living in Somalia. Somali

family networks are very extensive and the social ties between different branches of the family are very tight. A returnee with family and diaspora links in this country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan, or extended family, in Mogadishu through friends of friends, if not through direct contact."

27. We find that there is no evidence to suggest that Mr. Adan's mother could not be traced with the assistance of clan members in Mogadishu and family in the United Kingdom. There is no evidence to suggest that she would be unwilling to assist Mr. Adan to re-establish himself.
28. Mr. Dhanji submitted that Mr. Adan's evidence was that he had never met his mother's siblings [18]. However, given the evidence above of extensive family networks, and of social ties between different branches of the family being "very tight", we find that this claimed lack of contact when he was in Somalia will not prevent him from establishing contact with extended family members on return. We find that contact with his mother, extended family and clan members could reasonably be established by Mr. Adan.
29. In relation to his ability to find employment, there is no evidence before us to show that Mr. Adan would not be able to find casual work. As we found in our error of law decision, even if he does not have the qualifications to enable him to find employment in some parts of the formal sector, he is able to speak and write English as a result of his education here, as well as experience within an industry albeit for a short period of time.
30. Paragraph [8] of the headnote to OA states:

"The economic boom continues with the consequence that casual and day labour positions are available. A guarantor may be required to vouch for some employed positions, although a guarantor is not likely to be required for self-employed positions, given the number of recent arrivals who have secured or crafted roles in the informal economy."
31. There is no updated evidence before us to show why Mr. Adan is not capable of undertaking manual work and benefitting from this economic boom. He is a fit and healthy male. His evidence is that he no longer has any problems with drugs or alcohol. We do not accept the submission that his personal characteristics will stop him from finding employment. There is no medical evidence to suggest that he has an addictive or "eggshell" personality, or that he is vulnerable to giving into addiction. On his own evidence he has remained clean of drugs and alcohol. He has not committed any further offences driven by any addiction. We find that there is no evidence before us to support the submission that he has an addictive personality which will stop him from being able to access employment or to reintegrate into Somalia.
32. We find that Mr. Adan will receive funds from the Facilitated Returns Scheme (the "FRS"). Paragraph [7] of the headnote to OA states:

"A guarantor is not required for hotel rooms. Basic but adequate hotel accommodation is available for a nightly fee of around 25USD. The Secretary of State's Facilitated Returns Scheme will be sufficient to fund a returnee's initial reception in Mogadishu for up to several weeks, while the returnee establishes or reconnects with their network

or finds a guarantor. Taxis are available to take returnees from the airport to their hotel.”

33. We find that the money he will receive will be sufficient to enable him to secure accommodation and to meet his basic needs for several weeks. During this time he will be able to re-establish contact with family and clan members, and secure employment.
34. Mr. Adan’s evidence is that he left Mogadishu in 2007/2008 (page 47AB). He has therefore been absent from Somalia for about 15 years. He left when he was a child. However, we find that he has family and clan members who he can call on for support, and that he has the ability to find employment to secure his livelihood. We find that he will likely receive some remittances from his siblings in the United Kingdom. We find that he will be given sufficient funds from the FRS to sustain him for several weeks which will give him the opportunity to re-establish family and clan links, and to find employment.
35. We therefore find that it is not reasonably likely that Mr. Adan will end up in an IDP camp. The country guidance case in OA refers to improvements being made in some of the camps such that conditions do not breach the high Article 3 threshold. We have no evidence before us to show that, even if he did end up in an IDP camp, this would be a camp where conditions were so dire as to breach Article 3.
36. Despite this finding, we have considered paragraph [11] of the headnote to OA, the “causal link” between return and ending up in an IDP camp. This states:

“The extent to which the Secretary of State may properly be held to be responsible for exposing a returnee to intense suffering which may in time arise as a result of such conditions turns on factors that include whether, upon arrival in Mogadishu, the returnee would be without any prospect of initial accommodation, support or another base from which to begin to establish themselves in the city.”
37. We have found that Mr. Adan will have funds from the FRS which will sustain him for several weeks and enable him to pay for accommodation and his basic needs. He has not shown that his personal characteristics mean that he would spend this money on drugs and alcohol. As set out above, his evidence is that he does not have a problem with drugs or alcohol, and we have no evidence to suggest an addictive personality. We find that the FRS funds will sustain him over a sufficient period of time to enable him to begin to establish himself in Mogadishu, to reconnect with family and clan members, and to find employment. We find that the Respondent could not be properly held responsible were he to end up in an IDP camp where conditions were such as to breach Article 3.
38. Taking all of the above into account, we find that Mr. Adan has failed to show that the Respondent’s decision will result in a breach of Article 3 ECHR.

Decision

39. The appeal is dismissed.

K Chamberlain

Appeal Number: UI-

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 March 2023