IN THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005004

First-tier Tribunal No:
RP/00025/2022

THE IMMIGRATION ACTS

Decision and reasons Issued:

26th February 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

IAM

(Anonymity Direction Made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr R Toal instructed by Turpin Miller

For the Respondent: Mrs S Nolan, Home Office Presenting Officer

Heard at Field House on 31 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Somalia born on 5th May 1998. Between 2013 and 2019 the appellant was convicted of various offences including theft, public disorder, drug offences, and possession of offensive weapons. On 28th May 2019 at the Central Criminal Crown Court, he was convicted of violent disorder and sentenced to 3 years in prison. On 23rd July 2019 he was served with a decision to make a deportation order against him by virtue of section 32(5) of the UK Borders Act 2007. He was also notified of an intention to cease his refugee status on 24th June 2020 and invited via his legal representatives to make representations.

2. On 18th February 2022 the Secretary of State made a decision to revoke the appellant's protection status and to refuse his human rights claim against deportation. The appellant's appeal against that decision was dismissed on 8th November 2023 by First-tier Tribunal Judge Richardson ('the judge').

3. The appellant, with permission appeals, against the judge's decision on the following grounds

    (i) failure to apply country guidance or to give reasons to show it had been properly applied.
    (ii) erroneous requirement of corroboration
    (iii) procedural unfairness
    (iv) the appeal should have been allowed further to article 14 ECHR (discrimination) in conjunction with articles 2 and 3
    (v) the judge erred in finding the appellant was not socially and culturally integrated in the UK
    (vi) the judge in holding that there were no very significant obstacles to the appellant's integration in Somalia.

4. In relation to ground 1 Mr Toal, relied on his written grounds but also submitted that when the judge made material findings he applied **MOJ & Ors (Return to Mogadishu) Somalia CG** [2014] UKUT 00442 (IAC) but not **OA (Somalia) Somalia CG** [2022] UKUT 33 (IAC) because at the start of [30] the judge states that he was applying the test from **MOJ**. The reasoning following on failed to address the issue of guarantor (and thus employment and accommodation) which arose from **OA** but not in **MOJ**. It was submitted that the appellant was last in Somalia when he was just 4 years old and the country guidance required the judge to address the issue of whether there was a real risk that the appellant would be unable to find a guarantor, which the judge failed to do. At the hearing Mr Toal submitted that the failure to address the issue of guarantor was a material error of law.

5. Mr Toal emphasised his challenge on ground 2 which was in relation to procedural unfairness. He submitted that the statutory grounds of appeal (human rights) were made good owing to the breach of the Secretary of State's obligation to adopt a fair procedure when considering whether the revocation of refugee status was compatible with the United Kingdom's obligations under the refugee convention and whether the appellant's removal would be incompatible with his human rights. At the hearing Mr Toal produced a bundle of authorities which included **Saad v Secretary of State** [2001] EWCA Civ 2008, **Rahman v Secretary of State** [2005] EWCA Civ 1826, **Thirakumar v Secretary of State** [1989] EWCA Civ 12 and **R (Robinson) v Secretary of State** [1997] 3 WLR 1162. We were also provided with extracts from the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, dated February 2019, extracts from the relevant Immigration Rules and the Home Office Guidance on Asylum Interviews version 9.0, June 2022.

6. The key point made by Mr Toal was that the appellant was never interviewed by the Secretary of State about his reasons for not being removed to Somalia. The appellant was recognised as a refugee as a child because he was a dependent on his father's refugee status (part of the minority Ashraf clan). It was asserted that the appellant was unrepresented for significant parts of the decision making and appeal process and had been unable to put forward important matters. At the hearing before the FtT, there was an absence of a lawyer to produce witness statements and other evidence and the Tribunal was left with insufficient evidence. The obligation to adduce evidence rested with the Secretary of State who should have produced a copy of the determination allowing the

father's appeal. In the absence of relevant evidence, the Tribunal was only provided with the most generic or unsubstantiated assertion as to why the appellant was granted refugee status.

7. The appellant did not attend the hearing and provided no evidential material nor a witness statement. The appellant had not participated in his appeal because through no fault of his own the tribunal had lost contact with him. As such the Tribunal should have allowed the appeal because of the failure of the Secretary of State to interview the appellant. The judge had erred in law because he had not considered the appellant's rights under the Convention. Robinson at [37] confirmed that it was the duty of the appellant authorities (ie judges) to apply their knowledge of Convention jurisprudence.

Conclusions

8. In terms of ground 1 and the assertion that the judge failed to apply the country guidance, it is clear at [29] that the judge set out relevant aspects of the headnote of **OA** and noted correctly that **MOJ** also remains extant country guidance. The judge's reference at [30] to the test in **MOJ** was not unlawful.

9. The headnote in **OA** at paragraph 2, confirms that the country guidance given in **MOJ** at paragraphs (ii) to (x) of the headnote to MOJ remains applicable. Thus, an ordinary civilian on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR. It was acknowledged that there was durable change in Mogadishu since **AMM** in the sense the Al Shabaab had withdrawn form Mogadishu. A person may seek assistance from his clan members who are not close relatives but minority clans (as here) have little to offer. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members. Of particular relevance in **MOJ** are the following paragraphs in the headnote:

> *'(ix) 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.*

(x) 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.'

10. Those paragraphs remain relevant not least that there should be a fact sensitive assessment and it is not apparent that the judge failed to apply them.

11. The judge also, rightly, set out paragraphs 5 to 14 of the headnote of **OA** and proceeded, notwithstanding his reference to the test in **MOJ** to apply the considerations in both **MOJ** and **OA**. That is discernible from the paragraph [30] following the stated use of the test in **MOJ**. The judge was not in error in applying both, indeed he was obliged to do so. The judge looked at the circumstances of the appellant, albeit noting that there was limited information before him, and it is evident that OA was applied by reference to sections of the headnote which are particular to **OA**. For example, the judge at 30(c) specifically referenced paragraph 7 of the head note of **OA** such that the appellant would have 'access to some funds via the respondent's Facilitated Returns Scheme which as the judgment in **OA** notes would be sufficient to fund his initial reception and needs in Mogadishu until he is able to establish himself.'

12. Albeit Mr Toal urged us to find that the judge had not addressed the issue of the guarantor, the direction was indeed set out by the judge at [29] and this guidance identifies that a guarantor is not required for hotel rooms. Additionally, paragraph 8 of the headnote of **OA** identifies that '*the economic boom continues*

with the consequence that casual and day labour positions are available'. The judge did not rely on remittances being sent from the UK but relied substantially on the fact that the appellant had worked as a waiter (which was not challenged) and was in good health and there appeared to be no reason why he could not seek similar employment in Somalia. Additionally, it was found that he had been educated to senior school level and therefore may be able to secure or craft a role in the informal economy. Those findings were entirely consistent with **OA** and did not reflect that the judge had applied an incorrect test focussing on **MOJ** to the exclusion of **OA**. Paragraph 8 of the headnote confirms that '*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*'.

13. It is worth adding that headnote 9 of **OA** only states that a guarantor may be required to vouch for prospective tenants, not will be required in every case. Further, bearing in mind the guidance states that '*the term 'guarantor' is broad and encompasses vouching for the individual concerned rather than assuming legal obligations'* and that paragraph 5 of the headnote confirms that a '*returnee with family and diaspora links in this country will be unlikely to be more than a small number of degrees separation away from establishing contact with a member of their clan, or extended family, in Mogadishu through friends of friend, if not through direct contact',* we do not find that the judge erred in his approach in merely finding that the appellant could secure hotel accommodation and casual employment without more or moreover that the judge ignored the rather elastic situation described in the guidance. No material error is disclosed in the first ground. That is the case particularly on the evidence before him.

14. Ground 2 asserted that the judge's approach to the evidence, that the appellant said he suffered sexual assault whilst in Somalia aged 4, was incompatible with the principle that there in no requirement for corroboration. Notwithstanding the Secretary of State had taken no issue with this matter the judge is obliged to consider the factors in relation to the claim which is what he did. **ST (Corroboration – Kasolo) Ethiopia** [2004] UKIAT 00119 held:

> '*14. Paragraph 196 refers to the fact that an applicant may not be able to support his statements by documentary or other proof and cases in which an applicant can provide*

evidence of all his statements will be the exception rather than the rule. The Adjudicator reminded herself of these general principles and the Tribunal is not satisfied that the Adjudicator required corroboration before accepting the Appellant's account of events.

15. The fact that corroboration is not required does not mean that an Adjudicator is required to leave out of account the absence of documentary evidence which might reasonably be expected. An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support.'

15. In this case there was an absence of any medical report or documentation which might reasonably be expected but moreover a total absence of any oral evidence or indeed the appellant himself. It was open to the judge to give little weight to this matter. We find no error in the judge's approach.

16. Ground 3. Although we were referred to **Saad**, which confirms that there is a procedural obligation under the Refugee Convention to determine the question of refugee status, that authority at [21] confirms in terms that the Convention says '*nothing about procedures for determining refugee status and leaves to States the choice of means as to implementation at the national level'.*

17. That choice by the Secretary of State is encapsulated in paragraph 339BA of the immigration rules which specifically states that:

'where the Secretary of State is considering revoking refugee status or humanitarian protection… the following procedure will apply. The person concerned shall be informed in writing that the Secretary of State is reconsidering their qualification for refugee status or humanitarian protection and the reason for the reconsideration. That person shall be given the opportunity to submit, in a personal interview or in a written statement , reasons as to why their refugee status or humanitarian protection should not be revoked.'

18. That does not confirm that there should be interview. Although we were referred to the UNHCR guidelines, these, as have

been recognised in a range of legal authorities, are guidelines and do not have the force to undermine the approach adopted by the Secretary of State particularly bearing in mind **Saad** as cited and the immigration rules. Not least these guidelines require that there is a duty to ascertain and all the facts but that was clearly what the Secretary of State attempted to do.

19. As Mrs Nolan pointed out, on 24th June 2020 the Secretary of State sent the appellant notification of an intention to revoke his refugee status and details as to why. We do not agree that the Secretary of State was obliged to produce the information in relation to the father. It was abundantly clear why the appellant had been given refugee status (member of an Ashraf clan in line with his parent) as detailed in a letter dated 18th February 2022) and why his revocation was underway not least because his criminal offending prompted a review of his protection status. Paragraph 40 of 24th June 2020 letter invited the appellant to respond in writing. On 6th May 2021 the appellant again was invited to make written submissions. The appellant had ample opportunity to put his reasons for objecting to the revocation of his status and why he should not be removed to Somalia. Not least the February 2022 decision recorded that the appellant had made representations dated 23rd July 2019 in response to a letter of notification to deport him and further representations were received from his local MP on 16th August 2019. It would also appear that the appellant provided undated written submissions received by the Home Office on 23rd June 2021.

20. What is clear from the decision letter of February 2022 is that the appellant had legal representatives Turpin Miller Solicitors who were written to as early as June 2020 and who requested further time to make submissions in relation to revocation but no representations were received. There is no indication that any interview was requested. Attached to a bundle under the cover of a Rule 15(2)A of The Tribunal Procedure (Upper Tribunal) Rules 2008 application was attached a statement of Mike Poulter from the appellant's former solicitors dated 7th November 2023. This however was not before the FtT and we did not admit the statement.

21. Nothing in the above indicates that the process adopted by the Secretary of State did not afford the appellant the highest standard of fairness as required at [46] of **Thirakumar** particularly

bearing in mind the appellant was represented from 2020 onwards until after his appeal was filed with the First-tier Tribunal.

22. There are distinct and separate immigration rules governing the position of those seeking asylum and those being faced with cessation of refugee status and the Secretary of State is unarguably entitled to rely on the relevant rules.

23. The guidance in relation to asylum relates to the initial claim for asylum and not revocation. As we have explained it was open to the solicitors acting to request any such interview and submit representations and as experienced legal advisers, they would be familiar with the relevant material facts in relation to revocation.

24. The judge set out the chronology in relation to the appellant's attendance noting that the appellant did not attend the hearing. His solicitors apparently had come off record 'some time ago'. Further to The Tribunal Procedure (Upper Tribunal) Rules 2008 regulation 13(5) the tribunal may assume that the address provided by a party or its representatives remain the address to which documents should be sent until receiving written notification to the contrary. There was no suggestion that the representatives when they came off record failed to provide the Tribunal with contact details for the appellant. Indeed, the judge specifically considered and recorded at [3] that the appellant had been properly served with a notice of hearing dated 7th January 2023 and was entitled to proceed with the hearing on the basis that it was in the interests of justice (which incudes fairness). The judge also noted that no evidential material had been provided by the appellant [6].

25. The judge recorded the grounds of appeal at [7] which related to the revocation of protection status breaching the UK's obligations in relation to the Refugee Convention and in relation to humanitarian protection. As the solicitors were evidently originally on record the grounds would have been settled by legal representatives but nothing was said in the grounds of appeal in relation to any procedural defect, as charged by Mr Toal, because of a lack of interview. This was simply not argued before the judge.

26. Mr Toal submitted that the possibility that even if article 33 applied owing to the section 72 presumption the appellant might have had an opportunity to rebut this but Mrs Nolan, rightly in our

view, observed that previously rebuttal submissions had already been made in the 2019 representations from the appellant. Mr Toal submitted that the judge should have been aware of the huge array of additional procedural rights that the appellant had and because these were 'Robinson' obvious the judge erred in failing to allow the appeal.

27. We were particularly referred to page 945 of **Robinson** at paragraph E where it states that it is the duty of the appellant authorities to apply their knowledge of Convention jurisprudence to the facts as established by them when they determine whether it would be a breach of the Convention to refuse an asylum seeker leave to enter as a refugee and that they are not limited in their consideration of the facts by the arguments actually advanced by the asylum seeker or his representatives. We do not find that any of this is 'Robinson' obvious. We point out that none of the authorities were produced or were referenced or even before the FtT.

28. We have found no error of law in the judge's approach to the country guidance or assessment of the appeal on the facts before him. He considered whether there should be an adjournment and, we find, on the correct test decided to proceed with the hearing. Against that background and in the light of the facts we have identified above, we do not consider there was a readily discernible or obvious point of Convention law which favours the applicant. Not least, for the reasons we have given above there was no flaw in the procedural standards operated by the Secretary of State. The appellant had ample opportunity to present his case and evidence, with the assistance of legal representation, and even an appeal before the FtT which he failed to attend without explanation.

29. As stated at page 946 of **Robinson** the point of law 'must have a strong prospect of success if argued. Nothing less will do. ' That is simply not the case here. Although Mr Toal submitted that **Essa (Revocation of protection status appeals)** [2018] UKUT 244 (IAC) should have been considered by the judge (that the appellant notwithstanding the application of Section 72 should have been considered a refugee), we have found that the judge properly considered the risk on return on Article 3 grounds and found against the appellant. We cannot see that the appellant's refugee grounds would fare better. As the challenge was pinned on procedural defects by the Secretary of State, we do not understand how **Essa** might assist at this stage; it does not address procedural defects and relates to considerations following on from an assessment of

the facts. We find nothing in the procedural point taken in relation to the Secretary of State failing to offer an interview.

30. In relation to ground 4 on the point on discrimination and Article 14, first, we are not persuaded that the appellant received unfavourable treatment in relation to a relevant comparator. At first Mr Toal argued that it would be an asylum seeker who would be the comparator but then amended this to someone whose status was to be revoked. There is no indication that the appellant was treated differently from any other individuals having his refugee status revoked, or that he received unfavourable treatment. Indeed, the appellant was assisted by experienced legal representatives, unlike many, for much of the time leading up to his appeal and who would have looked to ensuring the appellant's rights were protected. He himself failed either to make further submissions and failed to attend a hearing. Even if that were not the case, Article 14 is a qualified right and the Secretary of State complied with legal requirements which render her approach justified.

31. On ground 5 the weight that a judge gives to the evidence is a matter for the judge. The judge was cognisant of the length of time the appellant had spent in the UK and that obviously he had been educated here and had family connections (although it was also submitted that these had been distanced). The judge adequately reasoned the lack of social and cultural integration owing to the appellant's criminal offending and lack of respect of the country's laws or social norms [33]. As the Court of Appeal said at para 18 of **Herrera v SSHD** [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors. The judge specifically addressed Section 117C in the alternative finding no very significant obstacles to the appellant's return.

32. We consider ground 6 on obstacles to integration stands or falls with ground 1 and to an extent ground 5, on which we found no material error. The judge's approach was consistent with the principles on very significant obstacles set out in **NC v Secretary of State for the Home Department** [2023] EWCA Civ 1379.

Notice of decision

We find no material errors of law. The decision of the First-tier Tribunal stands and the appellant's appeal remains dismissed.

Helen Rimington

Judge of the Upper Tribunal Rimington

Immigration and Asylum Chamber

Signed

19th February 2024