



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00575/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 24 October 2014

On 30 October 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHARMARKEH MOHAMED SHARIF

Respondent

Representation:

For the Appellant: Miss J Isherwood, Home Office Presenting Officer

For the Respondent: Mr T Lay, Counsel, instructed by Wilson Solicitors LLP

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing on asylum and human rights grounds an appeal by the present respondent, who I identify as the claimant, against the decision of the Secretary of State that he be deported under Section 32(5) of the UK Borders Act 2007.
2. Deportation is a matter which often attracts a great deal of public concern. This case is unusual because there seems to have been very considerable understanding and support offered to this claimant by the sentencing judge. He did send the claimant to prison for twelve months because he had possessed a false identity document but, as is recorded in the determination, the judge said:

“This is a very sad situation. No one has anything against you as a person at all. On the contrary, you are, as has been pointed out, a person who has not offended whilst in this country. You have been separated from you wife

and children for a long time and everyone understands that you must be desperate to get back and see them.”

3. I have not fallen into the error of thinking this somehow excused that claimant’s behaviour. His offending means that the public interest lies in the deportation of the appellant because that is what Parliament has said. However he cannot be deported if he is a refugee or if removing him would contravene the United Kingdom’s obligations under the European Convention on Human Rights.
4. Anyone with any relevant experience knows that many thousands of people across the world have established themselves as refugees from Somalia. This is a reflection of the appalling conditions that have existed in the country as the institution of the state have failed and various tribal groups have organised themselves to control different areas at different times. Some people seem to have prospered as a consequence. A very large number of people have not.
5. This claimant’s core case is very simple. He says that he is unable to go to his home because the home area in Somalia is under the control of Al-Shabab and he risks persecution there. As far as I can see there is nothing controversial in that finding. Certainly this was accepted by the First-tier Tribunal and that has not been challenged.
6. This does not mean that the claimant is entitled to international protection. The Tribunal had to go on decide if the claimant could reasonably be expected to relocate in a different part of Somalia. The Secretary of State insists that the claimant could go to Mogadishu and he be safe there. The First-tier Tribunal did not agree. The grounds supporting the application for permission to appeal are appropriately short and they make the point that when country guidance was given by the Tribunal in **AMM and Others (Conflict; humanitarian crisis; returnees; FGM) (Somalia) CG [2011] UKUT 00445**, there was an express reference at paragraph 363 to indicate that the situation in Somalia remained in a state of flux and the Tribunal were at least open to the possibility that the guidance it was giving then could be overtaken by events quite quickly.
7. In a sense this is almost immaterial. It is trite law that country guidance is a necessary starting point and should be followed but it is also trite law that it is only a starting point and where there is sufficiently compelling evidence the Tribunal should not hesitate to reach a conclusion other than that indicated by country guidance.
8. The grounds refer particularly to a report described conveniently as the 2013 Danish Report and a decision of the European Court of Human Rights **KAB v Sweden Application number 17299/12**. Both of these are sources of evidence that the situation in Mogadishu has improved and the influence of Al-Shabab has diminished.
9. However neither of these documents is evidence that the situation in Mogadishu is now safe for everyone. The Tribunal in this case, at paragraph 16, acknowledges the evidence that the situation has improved but also says how in some districts of Mogadishu Al-Shabab continues to

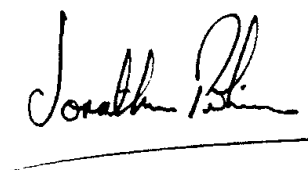
be influential. It was the Tribunal's view that, because of the absence of government soldiers, some people in Mogadishu risk serious ill treatment.

10. The Tribunal makes the point that the claimant has never lived in Mogadishu. It says again at paragraph 16 that the claimant "does not have a network of social support that he could rely on. He has been absent from Somalia for a considerable period of time". In other words, this is not a man who knows how to get around in Mogadishu. He is not a man who has anyone there to help him or support him and the Tribunal formed the view that he was someone for whom there was a real risk he would not be able to keep himself safe in a part of the world that still remains very difficult.
11. I think this may be a position where a differently constituted Tribunal could have reached a different conclusion on the available evidence. There is a subjective element in working out what it is reasonable to expect somebody to do and, unlike the First-tier Tribunal, I have not seen the claimant give evidence and have not been able to form an impression of him by hearing him answer questions. The determination does not read as if the Tribunal made a careless decision but my decision goes no further than saying that, in my judgement, the First-tier Tribunal reached a permissible decision on the totality of the evidence. Other than confirming that each case should be considered on its own facts this decision has no general application.
12. I do not agree with the Secretary of State's criticisms. It seems to me that the necessary points raised perfectly properly in the refusal letter have been considered and resolved in a way that the Secretary of State does not like. That is not an error of law.
13. I am persuaded that the appropriate documents were considered and a conclusion reached that was rationally open to the Tribunal on the question of refugee status. The claimant's criminal conviction is not of kind that disqualifies him from international protection.
14. It follows therefore that I dismiss the appeal in as far as it challenges the decision to allow the appeal on refugee grounds.
15. There was a very secondary finding that the claimant was also entitled to remain on Article 8 grounds because he hoped to be reunited with his family in Sweden and that would be impossible to achieve or much more difficult to achieve if he had to present himself from Mogadishu to reach that end. I see nothing wrong in the Tribunal's conclusions there. It is a most unusual set of circumstances and certainly not the kind of thing that is going to be worked out by meticulously pouring over the Rules that are alleged to encapsulate or codify the requirements of Article 8 of the European Convention on Human Rights. I cannot see any error of law in that part of the decision but the main point here is that the Tribunal found the claimant to be a refugee and although there was a grey area in its decision it was one that I am satisfied was legally permissible and so I dismiss the Secretary of State's appeal.

Signed

Jonathan Perkins
Judge of the Upper Tribunal

Dated 29 October 2014

A handwritten signature in black ink, appearing to read "Jonathan Perkins", is written above a horizontal line.