



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01223/2014

THE IMMIGRATION ACTS

Heard at Bradford Crown Court
On 23 March 2015

Promulgated & Sent to parties
On 13 April 2015

Before

**UPPER TRIBUNAL JUDGE GLEESON
UPPER TRIBUNAL JUDGE CLIVE LANE**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MOHAMMED FAISAL AHMED
(NO ANONYMITY ORDER)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer
For the Respondent: Ms S Khan, instructed by Halliday Reeves Law Firm

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Hindson allowing the claimant's appeal against the Secretary of State's decision to deport him to Somalia as a foreign criminal pursuant to section 32(5) of the UK Borders Act 2007. The claimant is a citizen of Somalia, born in what is now the semi-autonomous region of Somaliland. The First-tier Tribunal dismissed the claimant's appeals on asylum and humanitarian protection grounds,

and also under Articles 2 and 3 ECHR. The appeal was allowed only pursuant to Article 8 ECHR.

2. The claimant was born in December 1987 and came to the United Kingdom on a settlement visa in November 1989. He is now 28 years old and has an appalling criminal history in the United Kingdom, with convictions for 32 offences over an 11 year period, the last of which resulted in a custodial sentence of 3 years, imposed at Cardiff Crown Court on 16 August 2013. It is not disputed that he is a person to whom section 32 applies and in respect of whom the Secretary of State must make a deportation order, and may not revoke it, unless one of the Exceptions in section 33 is applicable.

First-tier Tribunal decision

3. The First-tier Tribunal Judge found the claimant to be an unreliable witness and his account of his late-disclosed homosexuality and other matters intended to support an asylum or humanitarian protection claim to be fabricated.
4. However, the following facts and matters were not disputed before the First-tier Tribunal, and are set out at paragraph 46 of the judge's decision:

"46. None of the following has been challenged. The [claimant] has been in the United Kingdom lawfully, since he was less than two years old, a total of some 25 years. He speaks English. He has been educated here both at school and college. He has had a number of jobs here. He has never returned to Somalia since coming to the United Kingdom. He speaks very little Somali. He has no family in Somalia. He has some family members in the United Kingdom. While in the United Kingdom he has always lived with members of his Somali family."

5. The judge considered that Exception 1 in section 33 was applicable. He had regard to the principles set out in sections 117A, 117B and 117C of Part 5A of the Immigration and Asylum Act 2002 (as amended) and directed himself carefully thereon, as well as having express regard to the fact that deportation of foreign criminals is in the public interest (see [55]).
6. The judge's core reasons for so concluding were set out at paragraphs 56-57 of the decision as follows:

"56. This is a case to which Exception 1 potentially applies. The [claimant] has been lawfully resident in the United Kingdom for virtually all of his life and I am satisfied that he is socially and culturally integrated into the country. He speaks English fluently, has been educated here and has worked here. He has always lived with other members of the Somali community but has not returned to Somalia since coming to the United Kingdom and has no contact with anyone in that country.

57. I am satisfied that there would be significant obstacles to his integration into Somalia. He left there when he was less than two years old and has had no contact with the country since then. I accept that the general situation in Somalia, in particular in Mogadishu, has improved in recent times. The [claimant] was born in a town that is now in Somaliland and I accept that the position there is perhaps better than Somalia itself. Nevertheless, I am satisfied that it would be extremely difficult

for the appellant to reintegrate into society in Somalia, or Somaliland, given the age at which he left and the fact that he has no family or other ties to the country.”

7. The judge found that Exception 1 was met and removal would be disproportionate.

Secretary of State’s grounds of appeal

8. The Secretary of State appealed. The grounds may be summarised thus:

Ground 1 The Secretary of State contended that in finding that there were ‘significant obstacles’ the judge had misdirected herself, since section 117(4)(c) required ‘very significant obstacles’ to be shown.

Ground 2 The Secretary of State argued that the First-tier Tribunal erred in not making it clear what country was meant (Somalia or Somaliland) when saying that the claimant had ‘no family or other ties to the country’.

Ground 3 In the light of the negative credibility finding, the Secretary of State contended it was not open to the First-tier Tribunal to accept the findings in paragraph 46 as true.

At paragraph 12 of her grounds, under ground 3, she sets out a list of criteria which Mr Dimwycz has today confirmed are extracted from her own internal guidance, as follows:

“12. For the avoidance of doubt, the [Secretary of State] avers that relevant considerations to the obstacles facing this (or any) deportee are:

- *Familiarity with language and culture in the country to which the foreign criminal is to be deported;*
- *Whether the foreign criminal has lived in the country to which he is to be deported, how long for, and how old he was when he left or last visited;*
- *Whether the foreign criminal or his family has hosted visits in the United Kingdom by family and friends from the country of return, or whether the foreign criminal has visited family and friends there;*
- *Whether the foreign criminal has ties which could be strengthened on return even if they are not very strong at the date of decision;*
- *Whether the foreign criminal received education or worked in the country to which he will be deported, or whether he has received education or developed skills in the United Kingdom which he could use to integrate into society on return;*
- *Whether the foreign criminal has previously demonstrated an ability to integrate into a new place, e.g. if he came to the United Kingdom as an adult.”*

9. Permission to appeal was granted by First-tier Tribunal Judge Chambers, who noted that the Judge had given the appropriate self-direction on ‘very significant obstacles’ and that the finding that there would be merely ‘significant obstacles’, while possibly a slip of the pen, was at least arguably an error of law. Permission to appeal was granted on that ground alone.

10. That was the basis on which this appeal came before the Upper Tribunal for an error of law hearing

Upper Tribunal hearing

11. At the hearing today, Mr Diwnycz accepted that there was no merit in any of the other grounds advanced on behalf of the Secretary of State. The only 'country' in question was Somalia: Somaliland, a semi-autonomous region, does not have the status of a separate country and ground 2 was unarguable as a reasons challenge.
12. As regards ground 3, the Secretary of State had not challenged any of the matters set out in paragraph 46 at the hearing, and Mr Diwnycz accepted that the judge had not erred in setting them out briefly, as she had done. The list of factors extracted from the Secretary of State's guidance at paragraph 12 did not assist her: the claimant had very little familiarity with Somali language or culture, had not lived there since he was younger than 2 years old, had not visited family in Somalia, nor was it asserted that he had hosted visits by Somali family members from Somalia. He had no ties to strengthen on return, had been educated and worked exclusively in the United Kingdom and had come to the United Kingdom so young that his ability to integrate as an adult was of no relevance.
13. That leaves the question whether in stating that there were 'significant obstacles' rather than 'very significant obstacles' as section 117C requires, this judge materially erred in law. In our judgment, he did not: the decision is very thorough and full, taking into account all relevant facts, materials and legal provisions. The judge's conclusion was that:

"57. I am satisfied that there would be significant obstacles to his integration into Somalia. ... Nevertheless, I am satisfied that it would be extremely difficult for the appellant to reintegrate into society in Somalia, or Somaliland, given the age at which he left and the fact that he has no family or other ties to the country." [Emphasis added]
14. We remind ourselves that the judge set out the whole of sections 117B and 117C in his decision and that his self-direction was correct. We do not consider, taken as a whole, that his finding in paragraph 57 was made at a level below that of 'very significant obstacles' to reintegration. Indeed, on the facts of this appeal, it is difficult to see what other conclusion could have been reached. The claimant is a 'home-grown criminal' with no connections at all to his country of origin. We find that there is no material error of law in this decision and we uphold it.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. We do not set aside the decision.

Signed

Date 25 March 2015

Upper Tribunal Judge Gleeson