



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01685/2017

THE IMMIGRATION ACTS

Heard at Manchester
on 5 December 2017

Decision & reasons promulgated
On 6 December 2017

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ABDULLAH ALI SHARRIEF
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Worthington of PRH Solicitors.

For the Respondent: Mr McVeety Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Agnew ('the Judge') promulgated on 30 March 2017 in which the Judge dismissed the appellant's appeal on both protection and human rights grounds.

Background

2. The appellant is a national of Somalia originally from Mogadishu who claims to be a member of the Reer Hamar, Ashraf clan, a minority clan in Somalia. The appellant claims he had six brothers and sisters and that the family left Somalia when he was a child and that he was brought up in Yemen where he received an education. The appellant claimed the family was supported by his father working in shops and that his mother worked from home. The appellant claimed that in 2014 when people were trying to oust the President he was hit on the top of his head when a bomb exploded. In 2015 the Houthis started trying to force young men to work for them. The appellant's cousin refused and was killed. The appellant claims that he and the males in his family dressed up as women in public to avoid being harassed and were afraid to go out. The appellant claims he was shot in the arm when Houthis entered the mosque he was attending and started shooting. The appellant's father decided that as their neighbours were leaving and going to the border of Yemen to try and get into Saudi Arabia they should accompany them and so they all went by lorry to the border. The appellant claims, however, to have lost his father and brother and to have been left with his mother, younger brother, and sister, and to have remained at the border for about 4 ½ to 5 months after which the appellant claimed his mother told him to cross the border and that she would remain with the children and try and find their father. The appellant claims his mother sold her gold necklace and earrings and found an agent who took the appellant to Saudi Arabia where he stayed for a month and from where he travelled to Turkey, Greece, France and eventually to the United Kingdom where he claimed asylum.
3. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out findings of fact from [10] of the decision under challenge which can be summarised in the following terms:
 - i. Setting aside the implausibility that the appellant, as the oldest male of the family, would leave his mother and younger siblings unprotected at the border when they had not found his father and brother in four and a half to 5 months, the Judge did not find plausible the appellants claim as to how he was able to pay an agent to get him to the UK [14].
 - ii. The appellant claims an agent was paid to get him from the border at Yemen to Saudi Arabia and then from Jeddah to Turkey by aeroplane and then a further flight to Greece as well as a flight to the UK using forged documents [15].
 - iii. The Judge did not believe that the family would not have needed any funds they could raise after they left the home area to survive for up to 5 months. The Judge did not believe that the appellants mother's gold earrings and necklace which she was wearing brought sufficient funds to pay for an agent to procure false documents and pay for the flights the appellant claimed to have

- taken. That claim was found to be wholly implausible and seriously damaging to the credibility of the appellant that his family were poor and/or that he lost touch with them so that he now claims that he is unable to get further support [16].
- iv. The Judge found inconsistencies in the appellant's claim about where he was, with whom, and when, after he left his home area. The Judge notes in the screening interview the appellant claimed to have left Yemen about one month previously with an agent and not to know which countries he had flown from to get to the United Kingdom although subsequently recalled he had been to Turkey and Greece. In a substantive interview, the appellant claimed he left Yemen after he was injured and that this was at the end of 2015 and that he spent 4 ½ to 5 months at the border between Yemen and Saudi Arabia before crossing over the border without his family to Saudi Arabia. In re-examination, the appellant stated it was one month ago he had left Saudi Arabia but he had left his home area stayed at the border 4 to 5 months. The Judge noted the appellant clearly stated in his screening interview he left Yemen one month ago which the Judge did not accept was open to misinterpretation [17].
- v. The appellant has failed to establish that his family all fled from Yemen and went to the border of Saudi Arabia where he lost contact with his father and other siblings, that he remained with them for almost 5 months at a time his mother sold the jewellery she was wearing to pay an agent or agents so the appellant was accompanied throughout his trip firstly across the border to Saudi Arabia, then to Jeddah airport where he was given forged documents enabling him to fly to Greece with an agent and then, having been put on another plane alone, on to the UK. The appellant had not established to the lower standard of proof which rests with him that he does not have family in Mogadishu and/or elsewhere with whom he has retained contact and who can offer support. He has not established he would have no family or clan support on return to Mogadishu. He has not established that he has never worked or could not obtain employment [18].
- vi. Although the appellant had lived for a time in a shelter in the United Kingdom, the Judge was not satisfied that staying in a shelter for a short period established that the appellant is without support from abroad or indeed Mogadishu should he require it long-term whilst he readjusts to life and establishes himself in his country of nationality. The Judge found the appellant appeared to be fairly knowledgeable about what he needs to show in terms of lack of any support from family abroad, hence his claim he cannot return to Mogadishu. The Judge did not find as credible the appellants claim that despite having been represented by two firms of solicitors and having used the services of a charity he had only discovered on the

day of the hearing some ten months after he claimed he lost touch with them in allegedly highly insecure and difficult circumstances, that he could ask the Red Cross to help him discover their fate [19].

- vii. Given the lack of credibility the Judge found the appellant had not established that he had lost contact with his family or that they went to the border of Yemen and Saudi Arabia rather than return to Mogadishu where they and other clan members can support him [23].
- viii. In relation to language issues, the appellant was provided with a Somali-Reer Hamar interpreter rather than the Arabic one which was originally planned. He also had a Somali-Reer Hamar interpreter at the screening interview. The Judge found the appellant has not established he will have problems in speaking to those in Mogadishu necessary for him to establish a life there and to work [23].
- ix. It was found the appellant had relied on significant resources to get him to the UK and that it has not been established he cannot rely on them again whether this be from family in Mogadishu or abroad or both in order to have sufficient support not to be in the very difficult circumstances those from extremely poor backgrounds and other areas may have when returned to Somalia [26].
- x. The Judge sets out the conclusions in [27] in the following terms:

27. The appellant has not discharged the burden of proof based on the low standard which rests with him to show that he has a well-founded fear of persecution for a Refugee Convention or that he faces serious harm under Article 15(C) of the Qualification Directive if returned to Somalia now. He does not meet the requirements of Appendix FM and paragraph 276ADE. The appellant is not relying on Article 8 of the European Convention on Human Rights.

- 4. The appellant sought permission to appeal which is granted by another judge of the First-tier Tribunal on the basis it was said to be arguable that the Judge may have materially erred in relation to his ability to reintegrate into a country where he did not speak the primary language, had not lived in since an infant, and apparently had no family support.
- 5. The application is opposed by the Secretary of State in her Rule 24 reply dated 14 August 2017.

Error of law

- 6. On behalf of the appellant Mr Worthington challenged the decision on the basis that the Judge had found the appellant had no family to return to in Somalia. This is arguably not a correct reading of the decision under challenge for in [18] the Judge finds that the appellant had not established he would have no family or clan support on return to Mogadishu, i.e. he had not proved this will be the case. This is therefore not an appeal in which it has been found the appellant

- will be returned without the type of support referred to in the country guidance case of MOJ [2014] UKUT 00442.
7. It was submitted that if the appellant does not have support the Judge had not undertaken the required careful assessment of all the appellant circumstances but, as stated above, it was not made out before the Judge that the appellant did not have support available to him in Mogadishu.
 8. Mr Worthington submitted on the appellant's behalf that the fact the appellant had an address in Huddersfield did not indicate he was a person of independent means. Such a submission is accepted but the main finding by the Judge is that it did not established that the appellant will be without support either from abroad or in Mogadishu. This is finding reasonably open to the Judge on the evidence.
 9. It was argued on the appellant's behalf that a number of aspects were not put to the appellant such as the amount received from the sale of the mother's jewellery or the finding was implausible that the appellant as the oldest male of the family would leave his mother and younger siblings unprotected. It is important to remember the reality of life in areas such as Somalia and the lawless parts of Yemen and the risk faced by women without a male protector of serious sexual and gender-based violence. The claim by the appellant is that his mother and siblings had lost his father and brother and now he himself, as the one who would ordinarily guarantee and provide protection, was to be lost or he abandon the female and minor members of this family. The conclusion by the Judge that this is implausible, with no evidence of any other means of support or protection, is within the range of conclusions the Judge was entitled to make on the evidence.
 10. The appellant's evidence is that his mother sold her gold necklace and earrings. The appellant also claimed the family were from a minority clan who escaped the civil war. The evidence in earlier country guidance cases considering these aspects clearly shows that minority clans fled Somalia as the militia of the major clans targeted them for persecution and subjected them to attacks where most if not all they had of value was taken from them. The appellant's claim that his mother appeared to have retained gold jewellery, unless that was purchased whilst the family settled in Yemen indicating they had access to funds not only to support themselves but also to buy such items, has to be considered against the background evidence.
 11. If the appellant's mother had the jewellery referred to, and the Judge does not find she did not, the issue relating to plausibility arises when comparing the appellants evidence in relation to what was sold by his mother to the costs of employing an agent, paying for the procurement of forged documents, and the cost of the appellant's journey to the United Kingdom which includes possibly three flights with the associated costs. This is a finding within the range of those reasonably available to the Judge on the evidence.
 12. An additional point, not originally pleaded but allowed in following Mr McVeety confirming he was not prejudiced, related to a challenge to the finding by the Judge that the appellant had given inconsistent evidence regarding where he was and whom he was with after he left his home area. Mr Worthington

- referred to a reply given in the asylum interview at question 136 which he stated answered the question raised by the Judge. Even giving the appellant the benefit of the doubt in relation to this point it has not been shown to be a determinative issue but rather one of a number of points taken by the Judge.
13. In relation to language, it was argued the Judge failed to factor into the consideration of all relevant circumstances the difficulties the appellant would have in communicating in Mogadishu. This is clearly an assertion that the appellant's language skills would prevent him from being able to properly integrate or find assistance. I do not find this is a matter that the Judge failed to factor in as the Judge clearly considered the language issue and makes specific reference of to it in the decision under challenge. The appellant speaks Somali with a Reer Hamar dialect, commonly referred to as Coastal Somali, and Arabic. Although there were problems with a Somali interpreter appointed for the substantive hearing who claimed he could not understand the appellants dialect, the appellant fails to establish that a person only speaking this dialect will be unable to survive in Mogadishu or to re-establish himself.
 14. The Reer Hamar form part of the Benadiri clan, a minor clan in Somalia, but not one whom in relation to the country guidance in MOJ states should be treated in any specific way. Whether a person from this ethnic group can survive in Mogadishu or other parts of Somalia is a fact sensitive issue.
 15. It is also important to recall that the appellant speaks Arabic. Over two million people in Somalia speak Arabic and indeed Mogadishu is a city founded by Arab settlers. The appellant fails to make out that he will not be able to adequately communicate with those he would need to in Somalia by either of his two languages such as to prevent him properly and adequately re-establishing himself. The finding to this effect at [23] of the decision under challenge is arguably within the range of findings the Judge was able to make on the evidence, especially as the finding by the Judge the appellant had not established he did not have family or clan members he could turn to would mean those he would primarily communicate with will be those who spoke his languages.
 16. I find the Judge clearly examined the evidence with the required degree of anxious scrutiny and has given adequate reasons for findings made. As such the weight to be given to the evidence was a matter for the Judge.
 17. The core finding is that the appellant is a person who had not proved that he had lost contact with family or would not have family or other clan members to support him on return. It was found the appellant has language abilities to enable him to establish a life and to obtain work. These are all findings reasonably open to the Judge on the evidence. The Judge noted the considerable costs that have been incurred in getting the appellant to the United Kingdom and did not find it made out that the appellant could not rely upon family either at home or abroad.
 18. The appellant fails to make out the Judge did not properly or adequately consider the matters as required by the country guidance case law or country information. The appellant fails to make out that the conclusions arrived at

resulting in the appeal being dismissed were not reasonably open to the Judge on the evidence or are findings infected by arguable legal error.

19. My finding is that the appellant has failed to discharge the burden of proof upon him to the required standard to establish any arguable legal error in the decision of the Judge material to the decision to dismiss the appeal.

Decision

20. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

21. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Judge of the Upper Tribunal Hanson

Dated the 5 December 2017