Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13961/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 3 April 2018	**On 17 April 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

A M S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Pickering, instructed by Howells, Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, AMS, is a citizen of Somalia who was born in 1984. By a decision promulgated on 19 January 2018, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons for reaching that decision were as follows:

> "1. The appellant, AMS, is a citizen of Somalia who was born in 1984. He appealed against the decision of the Secretary of State to refuse his application for asylum. The decision is dated 2 December 2016. The First-tier Tribunal (Judge Shergill) in a decision promulgated on 7 July

2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that Judge Shergill fell into legal error and that his decision should be set aside. My reasons for reaching that decision are as follows.

3. First, the judge considered in the course of the appeal evidence from the appellant's partner (P). P has been granted status as a refugee in the United Kingdom until 23 November 2020. It is apparent that Judge Shergill took a very dim view of the evidence he received, both written and oral, from P and concluded that she was an untruthful witness. He found that the appellant and P had colluded in giving untruthful evidence to the Tribunal and the Secretary of State. However, Judge Shergill went further than that. He considered that P had been granted refugee status by the respondent (her application for asylum had been granted; there had been no appeal) on a false premise. He considered it appropriate to notify the Secretary of State that she should reconsider the grant of refugee status of P.

4. I find that Judge Shergill was fully entitled to make findings in respect of the evidence of a witness who gave evidence before him. He was also entitled to find that P had given untruthful evidence to the Tribunal. He was entitled to find that the account which P may have given to the Secretary of State was, notwithstanding the Secretary of State's apparent acceptance of the account, untrue. It was, however, no part of Judge Shergill's role as a First-tier Tribunal Judge to recommend that the respondent look again at P's grant of status with a view to revoking it. However, that recommendation did not in itself constitute an error of law. Had the judge left matters at that point and then proceeded to assess the Article 8 ECHR appeal on the basis of facts as at the hearing (including the fact that P had been granted and continued to enjoy refugee status) then the judge may not have fallen into error. However, Judge Shergill did not leave matters at that point. At [79], in his analysis of Article 8 ECHR and, in particular, the application of Section 117B of the 2002 Act (as amended) he recorded the fact that the appellant has a genuine and subsisting relationship in the United Kingdom with P (I note that, as at the date of the Upper Tribunal hearing, the parties agree that she is pregnant with the appellant's child) and considered (albeit in general terms) the possibility of the family separating and the appellant applying to rejoin P in the United Kingdom at some future date. It seems to have occurred to Judge Shergill that such a scenario was potentially unsatisfactory. He sought to resolve any difficulties as follows:

However, given my concerns about [P's] credibility it may well be that her status is in question and/or in the alternative given her re-establishment connections with her family members and with the appellant now being the head of the household her risk factors have diminished. There are therefore material differences in the case put forward now to what the position was when she first arrived in the United Kingdom. Therefore, I see no reason why the appellant could not move back to Somalia and continue his family life with P there.

5. As at the date of the hearing before Judge Shergill, P was a refugee. There is nothing to suggest that the Secretary of State had sought to reconsider her status. It was not open to the judge to find

that it was at that time reasonable for P to return to Somalia. If the family returning together to Somalia is removed from the analysis as a possible and acceptable scenario, one is left with the fact that the removal of the appellant would separate the family. Whilst the judge has acknowledged that separation might occur, he has not attempted to assess the proportionality of such a separation. His failure to do so constitutes an error of law.

6. Secondly, it appears that the judge was given a copy of the "asylum grant minutes" which recorded the reasons of the Home Office for granting asylum to P [10]. Mr McVeety, who appeared for the respondent, helpfully extracted these minutes from his electronic file. The minutes make it clear that the grant to P had been, at least in part, on the basis of the danger she faced from Al-Shabab and her husband. The judge appears to believe that the sponsor had sought and been granted refugee status on account of the fact that she would be a lone woman returning to Somalia. Whilst that may have been a factor in her claim, the judge also had before him evidence that showed that the respondent accepted that she was a danger from other, specific agents within Somalia. I find that the judge was entitled to make findings in respect of P's credibility but those findings need to be read in the light of the fact that she had been granted refugee status in the United Kingdom for a number of reasons and not simply on account that she may return to Somalia as a lone woman. At [77], the judge considered that the untruthful evidence which he had received went "significantly towards the weight attached to the public interest against the appellant [in the Article 8 assessment]". That observation may stand but only subject to the qualification which I have detailed above.

7. In my opinion, the judge's analysis is generally sound. There is no reason for the Upper Tribunal to revisit the asylum claim or the credibility findings (subject to the proviso detailed above). The judge primarily fell into error at [79] where he sought to resolve the problems arising from separating the family by concluding that P could return to a country where she has a well-founded fear of persecution and/or ill-treatment. The Article 8 assessment, therefore, will need to be reconsidered at a resumed hearing before the Upper Tribunal. The Upper Tribunal will expect to receive fresh written and oral evidence concerning the family life of P and the appellant. If the Secretary of State wishes during the period before the resumed hearing to review the immigration status of P, that is a matter for her. If she decides not to review the status or, indeed, if she has made no decision by the date of the resumed hearing, the Upper Tribunal will proceed on the premise that P is a refugee and that the Secretary of State will not seek to revoke P's status.

Notice of Decision

8. The decision of the First-tier Tribunal which was promulgated on 7 July 2017 is set aside. The findings of fact shall stand subject to the qualification which I have detailed above in my decision. The Upper Tribunal (Upper Tribunal Judge Lane) will remake the decision following a resumed hearing at Bradford on a date to be fixed. The resumed hearing is limited to considering the appeal on Article 8 ECHR grounds. Permission to both parties to adduce additional evidence and for the appellant to call oral evidence at the resumed hearing.

> Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008
>
> Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings."

2. At the resumed hearing at Bradford on 3 April 2018, Mrs Pettersen, for the Secretary of State, told me that no decision had been taken by the Secretary of State in relation to the immigration status of the appellant's partner (P) (see [7] of my error of law decision). Further, the Secretary of State was aware that the appellant and his partner had a further child born in February 2018. Mrs Pettersen accepted that the relationship between the appellant and P and the two children is genuine and subsisting. She told me that the Secretary of State considered that there were insurmountable obstacles to family life being pursued outside the United Kingdom on account of P's continuing refugee status.

3. In the light of the helpful comments of Mrs Pettersen, I allow the appeal of AMS on Article 8 ECHR grounds.

Notice of Decision

The appellant's appeal against a decision of the Secretary of State dated 2 December 2016 is allowed on human rights grounds (Article 8 ECHR).

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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Signed Date 13 APRIL 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date 13 APRIL 2018

Upper Tribunal Judge Lane