



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

Appeal Number: PA/02286/2019

THE IMMIGRATION ACT

**Heard at Field House
On 6th December 2019**

**Decision & Reasons Promulgated
On 12th December 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MSS

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Allison instructed by J D Spicer Solicitors

For the Respondent: Mr Clarke Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Gillespie promulgated on the 19th September 2019 whereby the judge dismissed the appellant's appeal against the decision of the appellant to refuse the appellant's claims to asylum, humanitarian protection and relief on the grounds of articles 2 and 3 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I consider it appropriate to make an anonymity direction.

3. Leave to appeal to the Upper Tribunal was granted Tribunal Judge Grant-Hutchinson on the 4 November 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The grounds of appeal had raised 4 principal grounds for arguing that there was a material error of law. At the outset of the hearing before me it was accepted by the representative for the respondent that the 3rd and 4th grounds were made out. The appellant's representative wished to argue further that the first 2 grounds were also made out.
5. The appellant is a national of Somalia, an Ashraf and a Sufi Muslim. He lived in Qoryoley district of Lower Shabelle. In the past the Hawiye, a majority clan harassed and persecuted the minority clans in the area. The leader of the Hawiye is now a leader in the Somali Defence Force.
6. Latterly the area in which the appellant lived came under the control of Al Shabaab. Al Shabaab would come to the area and to the appellant's village and would harass and persecute the minority clans. The minor clan members were given the alternative of joining Al Shabaab and fight against the government or be mistreated or killed.
7. Al Shabaab came to the appellant's family shop and ordered the appellant's father to join them. The appellant's father refused indicating that he was an old man and that Sufism was against violence. The appellant's claim was that as a result his father disappeared. Al Shabaab were then coming to the area and were expecting the appellant and other young men to join them. The appellant fled leaving Somali and going to Ethiopia. Ultimately the appellant came to the UK and claimed asylum.
8. As part of the decision it was accepted that the appellant was a Sufi Muslim and that he could not practice his faith in his home area. It was accepted that the appellant would be at risk of conduct constituting persecution in his home area either because of his opposition to Al Shabaab, or on the basis of being a minority clan member or of having an imputed political opinion adverse to Al Shabaab or because of his Sufi faith and non-violence. It was accepted that the appellant was at risk in his home area.
9. It was accepted by the respondent's representative that those finding of fact should stand. The issue thereafter was whether the appellant could be reasonably expected to relocate to another area of the country including Mogadishu.
10. In essence the first 2 grounds seek to argue that a concession had been made in the reasons for refusal letter that the appellant could not relocate to Mogadishu. As the judge had made a finding adverse to the appellant on the issue of relocation to Mogadishu, it was claimed that the judge had failed to abide by the concession and made findings on an issue which was not in dispute because of the concession.

11. Further whilst it had been accepted that the appellant was a Sufi Muslim and would not be safe in his own area following the Sufi branch of Islam. There had been an expert report, which clearly confirmed that the appellant would be at risk in his home area. As the prospect of relocation to Mogadishu had not commented upon by the expert. It is claimed that the expert had not been asked to consider whether the appellant as a Sufi would be at risk in Mogadishu thus rendering relocation there impossible. The appellant's representatives were claiming the it was conceded that the appellant could not relocate to Mogadishu. The respondent's representative did not accept that such a concession was made.
12. The claim that a concession had been made is based on paragraphs 82 and 83 of the refusal letter. In the paragraphs the position in Mogadishu had been considered and it was noted that the appellant may have problems in relocating to Mogadishu given the country guidance.
13. The country guidance case, *AMM & others v SSHD* 2011 UKUT 00445 (IAC), in respect of Somalia had dealt with relocation to Mogadishu and dealt specifically with relocation by minority clan members. In considering whether minority clan members could relocate to Mogadishu, it had been noted that such individuals would find it difficult to relocate to Mogadishu if they had no prior connection with the city, such as previously living there, knowing clan members on whom they could call for support, having family members there or having financial support such that they could establish themselves in accommodation. Given the economic development in Mogadishu an individual who had such backing could then establish themselves in Mogadishu.
14. At paragraph 39 of the decision the judge had specifically noted that the appellant had an uncle, who he had made contact with. The uncle lived in London. The uncle had contact with family members in Mogadishu to whom the uncle sends funds. The judge found that the appellant therefore would not be without family or clan support or access to funds.
15. The uncle had been called by the appellant at the hearing. It does not appear that the uncle's position was known to the respondent at the time of writing the refusal letter.
16. In the refusal letter, paragraphs 82 and 83 as indicated, it had been set out that the appellant would have problems in relocating to Mogadishu. Considering the country guidance case that appears merely to be acknowledging the problems identified in the case law. The case law had specifically identified that those without clan support, or family support or financial support would have problems in establishing themselves in Mogadishu.
17. The respondent would not know whether the appellant had support or clan or family connections on which he could rely at the time of writing the refusal letter. It would be for the appellant to prove that he had not and therefore it would be for the appellant to advance evidence to show that it

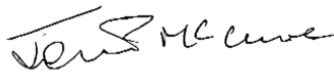
would be unduly harsh for him to relocate to Mogadishu or another area of Somalia.

18. The appellant's representative was seeking to assert that paragraphs 82 and 83 were a concession that the appellant could not relocate to Mogadishu. Have considered the wording of the paragraphs, I do not see that there is a concession. The paragraphs merely acknowledge that the appellant would have to face the very problems that were identified in the country guidance case. In which event it was for the appellant to prove that it would be unduly harsh for him to relocate to another area of Somalia including Mogadishu. The appellant's representative accepted that the burden of proving such was on the appellant.
19. In the event I do not find that the first two grounds are made out. I do not find that the paragraphs in the refusal letter referred to constitute a concession. The paragraphs merely acknowledge the problems identified in the case law. In the circumstances I do not find that the first two grounds are made out.
20. It has been conceded by the respondent's representative that the judge has failed to give reasons or adequate reasons for finding that it would be unduly harsh for the appellant to relocate and that such will require the appeal to be further considered with evidence to cover the issues raised.
21. For the avoidance of doubt the finding that the appellant is at risk in his home area is to stand and the issues to be determined relate to whether internal relocation is available to the appellant including relocation to Mogadishu. Equally the evidence that the appellant has an uncle and that the uncle is in contact with family members in Mogadishu, that the uncle provides funds to those family members is a factor also to be taken into account in any further consideration of this appeal.
22. In light of the issues to be determined it was accepted that the appropriate course was for this matter to be remitted to the First-tier Tribunal for further evidence on the issues identified including if appropriate evidence from an expert relating to the position of Sufis in Mogadishu and whether they are free to practice their faith in Mogadishu and whether as a member of the Ashraf and/or Sufis the appellant would be able to relocate to Mogadishu or another area of Somalia.

Notice of Decision

23. To the limited extent identified I allow the appeal and remit the case to the First -tier Tribunal to be reheard on the issues identified.

Signed

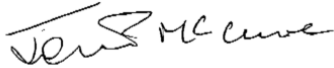


Deputy Upper Tribunal Judge McClure

Date 10th December 2019

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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed

Date 10th December 2019

Deputy Upper Tribunal Judge McClure