



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

Appeal Number: PA/08577/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 16 January 2019**

**Decision & Reasons promulgated
On 3 April 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**YMA
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For YMA: Mr T Hussain instructed by Legal Justice Solicitors.

For the Secretary of State for the Home Department: Mr Diwnycz, Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. Both YMA and the Secretary of State appeal with permission a decision of First-tier Tribunal Judge Hillis who at [55-57] of the decision under challenge wrote:

“55. The Asylum Appeal is inadmissible as the Appellant has failed to show he faces a real risk of persecution on return to

his country of origin for a reason recognised by the Refugee Convention.

56. The Qualification Directive is made out as the Appellant has failed to show he is at real risk of ill-treatment for a reason outside the terms of the Refugee Convention.
 57. The Human Rights Appeal is not made out as the Appellant has failed to show that his claim engages the terms of articles 2, 3 and 8 of the European Convention on Human Rights.”
2. The appellant is a citizen of Somalia born on 13 June 1974 who arrived in the United Kingdom on 7 September 2017 claiming international protection as a refugee on arrival.
 3. At [7] the Judge records:
 - “7. It was agreed by the parties at the beginning of the hearing that the Appellant did not pursue his claim pursuant to Article 15 (c) of the Qualification Directive, paragraph 276 ADE of the Immigration Rules or Article 8 of the European Convention on Human Rights. The Appellant’s appeal is on the basis that he is a member of a Particular Social Group, namely, a teacher and a member of the sub-clan of the Darood tribe in Somalia who has come to the adverse attention of the Islamic extremist group known as Al Shabab who took exception to him teaching boys and girls together in the same class as they regarded this as a serious breach of Islamic law.
 4. The reference at [56] set out above is clearly infected by arguable legal error in which it is said the claim under the Qualification Directive is made out even though the appellant had failed to show he is at real risk of ill-treatment on return. It is accepted, however, that this is likely to be as a result of the typographical error by the omission of the word “not”, with this paragraph really intending to read that the Qualification Direction is not made out, especially in light of [7] above and [51] of the decision under challenge.
 5. The Judge sets out findings as to credibility and fact between [26 - 50] of the decision under challenge, which are summarised below.

The Judges Findings

6. The Judge finds the appellant’s age, gender, nationality and Islamic faith are not in dispute in the appeal [26].
7. The Judge notes at [32] the appellants claim he cannot return to Mogadishu as Al Shabab will quickly learn that he has returned to Somalia and locate him there and that he is from the wrong tribe to live in Mogadishu which is controlled by majority tribe other than the Darood, the Hawiye.

8. The appellant's response question AI39 that "*himself and the other teachers were trying to get children together until the families came and got them, so they could be safe as the children who had fled the school*" was inferred to be a reference to the attack and closing of the school on 1 January 2017 which was found to be inconsistent with the appellant's account set out in his witness statement, at paragraph 9, where he sought to clarify he was not at the school on 1 January 2017 [35].
9. The Judge found inconsistent the claim by the appellant to try to get the children back to the school because there were no other schools around and no one would fund another school, the school being a source of income for the teachers, and that he did not understand the question put at interview, which the Judge inferred was a reference to a letter of the 1 January 2017 found to be inconsistent with the appellant's claim at the hearing that he went into hiding the day the school was closed down and left the country or alternatively the city. The Judge found inconsistencies as the appellant could not be seeking to get the children back to school after it had closed if he had left his home area or alternatively Somalia [37].
10. The Judge finds a chronology submitted on behalf of the appellant showing that Al Shabab attended the appellant's school and killed his brother on the same day, namely 8 December 2016, inconsistent with the account during cross examination in which the appellant claimed Al Shabab killed his brother in mid-December. The Judge did not find it credible that Al Shabab would threaten the appellant on 8 December 2016 then kill his brother later the same day when they could not find the appellant [38].
11. The Judge did not find it credible the appellant would have continued to teach at the school from 8 December 2016 to 1 January 2017 as claimed in his witness statement after Al Shabab killed his brother on either 8th December or mid December 2016. It was also found not credible that the appellant would be able to teach at the school during the period Al Shabab looking for him in order to kill him. The Judge found it inconsistent he did not go into hiding until 1 January 2017 when Al Shabab had abducted the headmaster and his colleagues and he suspected them to have been killed, and equally inconsistent with the appellant's claim that Al Shabab killed his brother at his shop he was watching football at a friend's home with his mobile telephone turned off [39].
12. The Judge finds the appellant internally inconsistent in his claim he was able to go into hiding from 1 January 2017 until he left Somalia on 14 March 2017 without Al Shabab being able to find him when he claimed both in his oral testimony and witness statement that Al Shabab knew everything that was going on in the town as they have spies working for them and it was easy for Al Shabab to find out

anything that happens in the town and it would have been easy for them to have got his number [40].

13. The Judge describes the above as being merely a number of numerous examples of when the appellant's account was significantly internally inconsistent.

14. The Judge also sets out in the following paragraphs:

"44. I conclude, on examples of the Appellants inconsistencies in his account set out above, and the evidence taken as a whole that the Appellant is not a credible and reliable witness. In reaching this conclusion I do not conclude that the Appellant was never a teacher as claimed and find that the photographs submitted in the AB are sufficient to show, to the lower standard required, he was, in fact the teacher in Somalia at some time. The photographs however do not show the name of the school or the date on which they were taken. Additionally, there are no photographs to show that the school was ransacked as claimed. I, therefore, conclude that the only aspect of the Appellant's account that this is supported by the photographs is the fact that he was a teacher at some stage and not necessarily the dates he claims he was in the core aspects of his Protection Claim.

45. I am grateful to Mrs Maewaha for her very proper and helpful submissions that the evidence before the Tribunal that the Appellant's claim to be a member of the sub- clan of the Darood majority clan will put him at risk of persecution and/or ill-treatment on relocation to Mogadishu or any other part of Somalia is solely the Appellant's own account. Neither she nor I have found any evidence in the background material that would indicate that this is the correct state of affairs. I conclude on the evidence taken as a whole that the Appellant has failed to show that he would not be protected by the majority Darood clan of which his sub- clan is a member. I, of course, bear in mind that an Appellant is not required to provide any documentary corroboration of any aspect of his Protection Claim. I have taken into account is simply one factor to be weighed in the balance that the Appellant has produced no evidence from the elders of the Darood clan, either Somalia or any that exist in the United Kingdom, that the Darood clan would not offer him any clan protection on return to Somalia due to the fact that he is merely a member of a sub- clan.

46. In reaching the above findings I conclude that internal relocation and sufficiency of protection are not issues that need to be resolved in this appeal."

15. The Judge considers the guidance set out in the country guidance case of MOJ and Others before concluding, in the alternative to the primary finding the claim lacks credibility, at [48 - 49]:

“48. I, therefore, conclude on the evidence taken as a whole that the Appellant can safely relocate to Mogadishu on removal to Somalia if I am wrong in my assessment of his lack of credibility and reliability in the core aspects of his claim.

49. The Appellant has failed to show, to the low standard required, that he faces a real risk of death, persecution or ill-treatment on removal to Somalia for any reason recognised by the Refugee Convention or that permit a grant of Humanitarian Protection for any reason whatsoever and, in particular, as a member of a Particular Social Group or, alternatively, his religious beliefs.”

16. The challenge by the Secretary of State is to the contradiction apparent on the face of the decision that the Judge dismissed the appellant’s asylum appeal but allowed it under the Qualification Directive which was found to be contrary to other aspects of the claim. Permission was granted by a judge of the First-Tier Tribunal in the following terms:

“The grounds are arguable. From the rest of the decision it seems clear that the Judge intended to dismiss on all grounds. That is a simple point, but the appellants grounds also justify consideration, as it is arguable that the Judge restricted consideration to clan only; and having found that the appellant was a teacher, he was arguably obliged to consider that aspect of the claim (particularly as it was the core of the appellant’s account).”

Error of law

17. It was not disputed at the hearing that so far as the Secretary of States application is concerned there is arguable merit. The issue therefore turned upon whether there was any merit in the appellants contention.

18. Mr Hussain argued on the appellant’s behalf that the Judge had not considered the situation for the appellant in Mogadishu in relation to how he would survive, and that risk was the only issue raised.

19. In the appellant’s bundle, at page 64, is reference to a report from the Global Coalition to Protect Education from Attack’ Education and Attack 2018: Somalia, 10 May 2018, which refers to attacks on school students, teachers and other educational personnel. There is reference to 100 cases during the 2013 - 2017 reporting period with security forces being responsible for a smaller number of violations. The report states the majority of such cases occurred in the southern and central states of Somalia with sporadic cases reported in Puntland. There is reference to 2013 media monitoring reports identifying several cases of Al Shabab abducting more than 100 Quranic schoolteachers in central and southern Somalia, in most cases for refusing to comply with the group’s demands. There are a number of references in 2014 and 2015 to similar incidents. More relevant developments in 2017 are recorded in the following terms:

'In 2017, al Shabab posted an online video in which the group's spokesperson threatened to harm teachers and parents who continued to send their children to Western-style schools. [1888] There were also two attacks, including one targeting a Ministry of Education official and including one attack affecting schoolchildren.

On April 10, 2017, a Ministry of Education officer reportedly died after a bomb planted on his car exploded in Hamarweyne district, Mogadishu.

On October 14, 2017 a large truck bomb detonated in Mogadishu, killing more than 300 people and injuring hundreds, according to the *Guardian*. Among those killed were 15 primary school children who were on a school bus at the time of the blast.'

20. There is reference at page 228 of the applicant's bundle to an incident in April 18 to 2017, when unidentified opposition forces fired mortar shells that landed on a primary school in Mogadishu, Benazir region. Reports indicated that between one and four students were killed, and that seven or eight other civilians were injured.
21. Other material on that page repeats that found in the article at page 64. referred to above.
22. At page 59 of the applicant's bundle is a reference from the United Nations at [148] stating *"attacks on 64 schools were verified, 58 of which were attributed to Al Shabab. Cases include the detention of teachers refusing to adopt Al Shabab's curriculum or school closures. For instance, on 24 February, Al Shabab closed up the Madras in Ceel Garas town, Galguduud Region, and arrested the teacher, who declined to refers students for military training. A 10 verified attacks on hospitals, 6 were attributed to Al Shabab."*
23. Mr Hussain argued that the material in the appellant's bundle refer to attacks on schools in 2017 leading to a submission that as the appellant will be returned as a teacher and had to make his living as a teacher the risk faced needed to be assessed in light of the country information as teachers are a group that are specifically targeted and that if there is a real risk of harm internal relocation cannot be said to be reasonable. Mr Hussain also argued the appellant faced a real risk travelling to and from the schools and government institutions.
24. It is not disputed that there have been attacks on schools and teachers in the past. As noted in the country information the motivation for such attacks by Al Shabab appears to be their belief that some teachers in some of the schools, primarily in areas under their control, are not following the curriculum they believe should be taught to children or refusals by teachers to handover children for the purposes of military training.
25. It is not disputed that a school bus containing children was caught up in a bomb blast, but it is not made out that that the bombers were specifically targeting the children or teachers. It appears more likely

to have been an act of indiscriminate violence in relation to which the children were, unfortunately, in the wrong place at the wrong time.

26. The appellant on return to Mogadishu has a skill set which is in demand namely that as an experienced teacher. What Mr Hussain was unable to refer the Upper Tribunal to was country information that shows teachers face the degree of risk whilst undertaking their professional occupation in Mogadishu on 16 January 2019 sufficient to warrant a finding the appellant is entitled to a grant of international protection or a finding that it is unreasonable to expect him to relocate to Mogadishu.
27. The appellant did not produce evidence to show that if returned to Mogadishu he will become destitute. He is an educated experienced individual with a particular skill set that is in demand. It was not made out, if he does not wish to return to teaching, that he could not secure employment elsewhere. There is a lot of evidence provided in the appellant's bundle regarding risk to teachers which is that referred to by Mr Hussain. It is not made out the Judge did not take such evidence into account.
28. It is particularly noted there is no country guidance case law to which the Upper Tribunal has been referred which holds teachers per se face a real risk on return such that they are entitled to a grant of leave to remain in the United Kingdom.
29. The evidence before the Judge, properly considered by him, does not support the applicant's claim the Judge has erred in law. The Judge did not find the appellant's claim credible with the exception of the fact that he was a teacher. While some government departments or members of the government are targeted and whilst there is indiscriminate violence in some parts of Somalia, it is not made out the Judge failed to consider the risk relied upon by the appellant or made a decision contrary to the country material. In relation to internal relocation the appellant had not established that it is unreasonable in all the circumstances for him to be returned to Mogadishu in light of the factual matrix of this case, relevant country information, and country guidance case law.
30. In conclusion: I find the appellant has failed to establish arguable legal error material to the decision to dismiss the appeal. I find the respondent has established arguable legal error in relation to [56] of the decision under challenge and in the part of the determination headed 'Notice of Decision' in which the Judge allowed the appeal under the Qualification Directive. I substitute a decision dismissing the appeal under this head as a result of the error being typographical when the content of the decision under challenge is considered as a whole, compounded by what appears to have been a lack of care when proofreading the decision prior to promulgation.

Decision

- 31. **There is no material error of law made out by the appellant in relation to the Judge’s decision in dismissing the appeal. That part of the decision shall stand.**
- 32. **I find the Secretary of State has made out that the Judge materially erred in law. I set aside the decision of the original Judge allowing the appeal under the Qualification Directive.**
- 33. **I remake decision as follows. The appeal is dismissed.**

Anonymity.

- 34. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 18 March 2019