



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

Appeal Number: PA/08924/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 4th April 2019**

**Decision & Reasons Promulgated
On 17th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**JAMAL [B]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, Counsel

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Somalia born on 2nd February 1982. The Appellant claims to have left Mogadishu and travelled to Turkey arriving on 2nd October 2017. He claims to have arrived in the UK on 5th November and stayed in the airport until 6th November 2017 when he claimed asylum. However, it is noted that the Home Office has evidence that confirmed he disembarked from flight BA054 from Johannesburg on 6th November 2017. The Appellant's claim for asylum is based on a fear of persecution due to his political opinion. It is accepted that he is a member of the Ashraf clan and that he is a Muslim. His application for asylum was refused by Notice of Refusal dated 4th July 2018.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Buchanan sitting at North Shields on 31st August 2018. In a decision and reasons promulgated on 27th November 2018 the Appellant's appeal was dismissed on all grounds.
3. Grounds of Appeal were lodged to the Upper Tribunal on 12th February 2019. On 28th February 2019 First-tier Tribunal Judge Blundell granted permission to appeal. Judge Blundell noted that the First-tier Tribunal Judge had rejected the Appellant's account of fearing Al-Shabab but that at paragraph 30 he had recorded that this finding was not necessarily determinative and went on to consider whether the Appellant could return safely to Mogadishu. He decided that issue adversely to the Appellant in light of the fact that he had spent months living there in 2014. Judge Blundell considered that it was arguable that this finding was vitiated by a failure to consider whether in the light of paragraph 25 of the Appellant's statement those favourable circumstances continued to exist at the date of hearing.
4. On 26th March 2019 the Secretary of State responded to the Grounds of Appeal under Rule 24. The grounds submit that it was open to the First-tier Tribunal Judge to find at paragraph 30 that, "The Appellant had available (family) support (in Mogadishu) in 2014 and there was nothing before me to show that that would not be so now if he was returned to Mogadishu."
5. The Rule 24 response goes on to state that even if the First-tier Tribunal Judge did err (which is not accepted), the error was not material because the judge made an alternative finding at paragraph 33 that the Appellant had a viable internal relocation option and that the grounds did not challenge this alternative finding.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Collins. Mr Collins is familiar with this matter having been the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Ms Holmes.

Submission/Discussion

7. Mr Collins starts by stating that paragraph 3 of the Rule 24 response is misguided and that the question to be asked is "can a person from outside Mogadishu safely return there?" He points out that it is accepted in the determination that the Appellant is from Shalanbood which is some two hours away from Mogadishu. He takes me to the judge's findings in particular to paragraph 30 which Mr Collins urges me to read in its entirety and which I confirm I have done and to cross-reference that paragraph with the Appellant's statement in particular at paragraph 16 and paragraph 25. He submits that it is clear from the Appellant's evidence within his witness statement and his oral testimony that there is no-one

presently in Mogadishu who is able to support him and he submits it is speculative to say that because the Appellant had support in 2014 that he would have had some support there some four years later in 2018 and that the Tribunal should believe his statement that he has no-one there now who could help him. He asked me to look at the Appellant's case as set out at paragraphs 13 and 15 pointing out that the Appellant's wife had fled to Kenya and is now in a refugee camp and that at paragraph 13 it is recorded by the First-tier Tribunal Judge that the Appellant had stated he could not live in Mogadishu as he had no family or friends there or anyone to help him. He submits that the evidence set out at paragraphs 13 and 15 was not rejected and was before the judge.

8. He takes me to his Grounds of Appeal and the law as set out in *MOJ and Others (return to Mogadishu) Somalia [2014] UKUT 00442 (IAC)* which he submits remains good law. He submits that what is clear from those passages is that the crucial issue is whether a minority clan member would have access to family support in Mogadishu. The issue in this particular case is whether or not the Appellant has family in Mogadishu who can support him. He submits that the situation is that the Appellant now no longer has anyone there and the essential question to be asked is does the Appellant have family to turn to in Mogadishu and that the judge's finding is speculative. He submits that the evidence needs to be properly heard and asked me to remit the matter back to the First-tier Tribunal for rehearing.
9. Ms Holmes in response submits that broadly speaking the judge did not find the Appellant's evidence to be credible and that the judge did take account of all the evidence but quite simply did not believe the Appellant. She takes me to the contentions made at paragraph 30 where the judge makes conclusions that the Appellant has not established his case with regard to family support to the lower standard of proof to which he is subject. Effectively, she submits that this is a matter of mere disagreement. She submits that what the Appellant has said at paragraph 25 of his witness statement does not matter. The bottom line is the judge did not believe the Appellant therefore there is no error. She submits that the judge has looked at everything and made findings that were open to him.
10. In a brief response Mr Collins submits that the judge has to make proper reasoned findings and that he has failed to engage with the evidence that was before him as to whether or not the Appellant can go to Mogadishu. Authority says that he could be at risk and he reminds me that his wife and children have gone to Kenya therefore the closest of family members certainly cannot be in Mogadishu. He submits that the decision requires a reasoned finding which quite simply in his submission is not there.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by

taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

13. The starting point in this appeal relates to the credibility of the Appellant and his testimony. The approach adopted by the judge is set out at paragraph 29 of his decision. There is nothing wrong in that approach. A proper approach to credibility would require an assessment of the evidence and of the general claim and in asylum claims relevant factors would be the internal consistency of the claim, its inherent plausibility and the external factors of the sort typically found in country guidance. It appears that it was clear that in 2014 the Appellant had available support in Mogadishu. The judge has found that there was nothing before him to show that that would not be so if he was returned now. The issue is consequently very much a fact-based issue. The issue is whether or not on return to Mogadishu the Appellant would be placed at a real risk of persecution. It is accepted that the Appellant is a member of the Ashraf minority clan from Shalambood and not Mogadishu. Guidance is given in paragraphs 340 to 342 of *MOJ*.
14. Consequently, this case turns on whether or not the judge was entitled to make findings that if the Appellant were returned to Mogadishu he would have family available for support. The issue may well not have arisen if the Appellant had not returned in 2014 and that it had been accepted that at that time there was support. It is clear that that support could not have been from his wife and children who are it is believed and contended in a refugee camp in Kenya. The issue before me is solely whether or not the judge has erred in law in making his findings. I do not believe that he has.

15. Mr Collins makes strong contentions that the judge has not made proper reasoned findings and has failed to engage with the evidence that was before him. That simply is not the case. The judge heard the evidence not the Upper Tribunal. The judge made findings on credibility. The evidence is set out in detail, in particular at paragraph 27, and the issue as set out in MOJ is thoroughly addressed by the judge at paragraph 30. The judge has given reasons as to why he has made his findings and concluded that there is nothing before him to show that the Appellant would not have the available support on return to Mogadishu now that was available in 2014. Having made that finding to which he was entitled to the judge had gone on to conclude that in such circumstances the Appellant could return to Mogadishu. The judge was consequently entitled to reach his conclusions and has given reasoned findings. In such circumstances I find that the submissions made amount to little more than disagreement with the conclusions reached by the judge and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Appellant is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 15 April 2019

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 15 April 2019

Deputy Upper Tribunal Judge D N Harris