Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00158/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 17 December 2019	**On 8 January 2020**

Before

Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

MOHAMED [O]
[Anonymity direction not made]

Claimant

Representation:
For the claimant: Mr J Greer, instructed by Greater Manchester Immigration
For the appellant: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State has appealed against the decision of First-tier Tribunal Judge Foudy promulgated 28.2.19, allowing the claimant's appeal against the decision of the Secretary of State to revoke his refugee status, to refuse his human rights claim, and to deport him from the UK.

2. First-tier Tribunal Judge Manuell refused permission to appeal on 13.2.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Storey granted permission to appeal on 21.3.19.

3. The background to the application is as follows. The case is one of cessation of refugee status under Article 1C of the Refugee Convention, on the basis of significant and non-temporary changes in the objective circumstances in Somalia on which the claimant's grant of refugee status was based. In allowing the appeal, Judge Foudy referenced the decision of the Upper Tribunal in AMA (Article 1C(5) – proviso – internal relocation) Somalia [2019] UKUT 00011, holding that, in principle, changes in only one part of a country could justify cessation but in practice it would be difficult to see how sufficient protection could be provided in those circumstances. Finding the claimant to be a vulnerable minority clan member with enduring and severe mental illness, the judge concluded that it would be unduly harsh to expect him to relocate to Mogadishu. Further, the judge was not satisfied that Mogadishu had experienced the required significant and non-temporary change in circumstances.

4. In essence, the grounds of appeal to the Upper Tribunal are that the correct approach is that of MA (Somalia) [2018] EWCA Civ 994 and to determine whether the claimant would be recognised as a refugee at the present time. It is suggested that the First-tier Tribunal was not bound by AMA and that the Secretary of State is not required to show that the appellant's home area is safe.

5. At the hearing before me on 30.5.19, Mr Tan pointed to the facts that there were two inconsistent Upper Tribunal decisions on this issue, the second being MS (Somalia) [2018], both of which were shortly to be considered by the Court of Appeal, listed for 10.7.19, to determine the correct approach. Mr Tan's application was to postpone the appeal in the present case to await the outcome of the Court of Appeal's decision on the issue. Mr Greer did not object to the adjournment.

6. I considered whether it would be more productive to determine the error of law issue and, if found, postpone the remaking of the decision behind the Court of Appeal decision. However, it is clear that the issues in contention in the error of law aspect of the present case are identical to those pending before the Court of Appeal. In the circumstances, I agreed to adjourn this matter to await the outcome of the decision in the Court of Appeal, in accordance with the directions below.

7. At a further hearing before me on 23.9.19, listed for case management, it was noted that the Court of Appeal had promulgated the awaited decision in MS (Somalia) v SSHD [2019] EWCA Civ 1345. Both parties had submitted position statements but those had not been received by the Upper Tribunal. I listed the matter for substantive hearing of the error of law issue and directed that steps be taken to ensure that the position statements had been received by the Upper Tribunal.

8. The matter then came before me for hearing on 17.12.19. I pointed out that the position statements had not been received. Eventually, those documents were produced or sent so that I have been able to take them into account along with the oral submissions of both representatives.

9. I have also carefully read the Court of Appeal's decision in MS (Somalia). In summary, the Court of Appeal held that cessation is a mirror-image of the grant of refugee status and can be justified on the basis of significant and non-temporary change of circumstances in the place of proposed relocation, and does not require a country-wide change in circumstances. Lord Justice Hamblen stated:

> "49. In summary, in a case in which refugee status has been granted because the person cannot reasonably be expected to relocate, a cessation decision may be made if circumstances change, so as to mean that that person could reasonably be expected to relocate, provided that the change in circumstances is, in the language of the Qualification Directive, "significant and non-temporary". Helpful guidance in relation to the assessment of the reasonableness of internal relocation is given in the recent decision of this Court in AS (Afghanistan) v SSHD [2019] EWCA Civ 873.
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> 50. The size of the area of relocation will be relevant to the reasonableness of being expected to relocate there and also to whether the change in circumstances is significant and non-temporary. I do not, however, accept that there is any requirement that it be a substantial part of the country. Article 7, which is relied upon by Mr Vokes, is concerned with the different issue of the circumstances in which non-State parties or organisations may be regarded as actors of protection. In that context it is understandable that they should be required to be in control of a substantial part of the State.
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> 51. I also have reservations about the generalised statements made by UT Judge Plimmer in AMA that it will be difficult in practice for a change in circumstances in a place of relocation to be sufficiently fundamental and durable or "significant and non-temporary" for there to be cessation. That may be so in some cases, but it will all depend on the evidence in any particular case and one should not generalise.
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> 52. I recognise that this involves differing from the approach set out in paragraph 17 of the UNCHR Guidelines in so far as that states that "changes in the refugee's country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status". I accept, however, as the Guidelines state, that "not being able to move or establish oneself freely in the country" is relevant to whether the change in circumstances is fundamental, or "significant" and "non-temporary".
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> 53. It follows that the FTT and the UT erred in law in holding that the availability of internal relocation cannot in principle lead to a cessation of refugee status and the case will have to be remitted to consider whether or not it does so on the facts in this case."

10. Lord Justice Underhill agreed but added:

> "82. I only wish to say anything of my own on ground 1, which raises the only issue of general application. I appreciate that our conclusion differs from that of UNHCR at para. 17 of its Guidance, quoted by Hamblen LJ at para. 33 of his judgment. That is not something that I take lightly, but I have to say that I do not find convincing either of the reasons given by UNHCR for the proposition that "changes in the refugee's country of origin affecting only part of the territory should not

> … lead to cessation". The first is that the risk of persecution should not be regarded as having been removed if the refugee "has to return to specific safe parts of the country"; but, with respect, that statement is itself unreasoned, and I cannot see any principled basis for it, given that the refugee would not have been granted protection in the first place if there were a part of his or her own country where they could be safe and to which it was reasonable for them to relocate. The "mirror image" approach endorsed by Hamblen LJ seems to me both fair and principled. I recognise that the fact that the refugee has left their home country and found safety in the country of refuge, perhaps years previously, must be taken into account; but, so far as the Convention issues are concerned, the way that that is done is not by changing the basic criteria for protection but by the requirement for a specially strict approach to their application, with the burden on the Secretary of State, as enjoined in Hoxha (see para. 48 of Hamblen LJ's judgment). It may also of course, separately, and depending on the particular facts, give the refugee grounds for arguing that his or her removal is in breach of their rights under article 8 of the ECHR. As for the UNHCR's second reason, namely that the fact that only part of the country is safe indicates that the changes have not been fundamental, I cannot see that that will axiomatically be so. Whether it is or not will depend on the particular facts.
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> 83. At para. 50 of his judgment Hamblen LJ rejects Mr Vokes' submission (by way of alternative to his main point) that cessation will not be legitimate in an internal relocation case unless the safe area is "substantial". I agree with him, but the context must be appreciated. The Secretary of State proposes to return MS to Mogadishu. Mr Vokes' submission proceeded on the assumption that even if Mogadishu is safe that cannot justify cessation because it does not constitute a substantial part of Somalia as a whole. In terms simply of land area, that is no doubt true, but in other respects it is plainly not: on the contrary, it is the capital and the largest city in the country, and home to a substantial part of its population. I do not accept that the possibility of return/relocation to such a place is incapable of justifying cessation, though of course whether it in fact does so will depend on the assessment of the tribunal."

11. The Secretary of State's position as drafted by Mr Tan was to rely on MS (Somalia) and to maintain that there was an error of law in the decision of Judge Foudy. Mr Diwnycz had nothing to add to Mr Tan's position statement.

12. Mr Greer's position statement and reply to the the Secretary of State's submissions is that MS (Somalia) does not advance the Secretary of State's case at all. It is pointed out that AMA was not Country Guidance and was not overruled. It had been agreed that the claimant would be at risk of persecution in his home area. It is submitted that Judge Foudy properly considered whether the claimant could avail himself of an internal flight alternative by relocating to Mogadishu, properly directing herself on the appropriate legal test.

13. As Mr Greer pointed out in his submissions, whilst referencing AMA, a reading of the decision of the First-tier Tribunal demonstrates that the judge did not in fact rely on Judge Plimmer's observation and did not proceed on the basis that a change of circumstances had to be country-wide rather than confined to a place of relocation. It is clear that the First-tier Tribunal went on to consider whether there had been the required 'significant and non-temporary' change in circumstances in Mogadishu to justify cessation of the appellant's refugee status, and made a fact-specific assessment of his circumstances, in particular his mental health issues. It was on that basis that at [22] the judge concluded that it "would be unduly harsh to expect this claimant, "with an enduring and severe mental illness, who also belongs to a minority Somali clan, to relocate to Mogadishu where he has no contacts and no family support network."

14. Having considered the matter carefully, I reach the conclusion that Judge Foudy took the course mandated by the Court of Appeal and considered whether internal relocation to Mogadishu could properly justify cessation of refugee status on the basis of 'significant and non-temporary' change in circumstances. Necessarily, that involved not only consideration of the relevant country background information but also the particular circumstances of the claimant.

15. As far as the country background information is concerned, Judge Foudy had before her two country expert reports and the Secretary of State's own policy, which recognised the difficulty for a minority clan member to relocate to Mogadishu.

16. In relation to the claimant's mental health issues, the judge had cogent medical evidence that he has suffered from schizophrenia since 2013 and had both self-harmed and tried to kill himself, acting on voices in his head. His history demonstrated a 'revolving door' of relapse and recovery typical of schizophrenic sufferers. It was also clear that he needed the support of his wife not just to remind him to take medication but to prompt him to eat and wash. The evidence suggested that if he departed from his required medication routine, he would inevitably relapse and become psychotic again, at which point his ability to keep himself safe would be diminished and the risks of self-harm increased.

17. The judge carefully considered whether the claimant would be able to access medical support in Somalia. In this regard, the grounds complain that the judge made no reference to the objective evidence cited in the refusal decision to the effect that Somali has five mental health centres run by the Habib Mental Health Foundation, including one in Mogadishu. However, it is not necessary for the judge to address each item of evidence. Further, there was also expert evidence before the judge in the report of Markus Hoehne (at paragraphs 52 to 65) that health care in general and mental health care in particular in Somalia is extremely poor. The Habeeb Clinics is referenced at paragraph 65, where it is noted that the clinic is run not by a psychiatrist but a nurse, and that the facilities are

moderate, suffering form shortcomings in personnel, medication, and treatment.

18. I am satisfied that it was open to the judge to rely on the country background and medical evidence to conclude that for this claimant relocation to Mogadishu would be unduly harsh and unreasonable, so that he remains entitled to refugee status. As the judge stated at [22] of the decision, the claimant is a vulnerable man with an enduring and severe mental illness, who even struggles to keep himself safe in the highly supported surroundings of the UK where he has close family and the NHS to rely on. Adequate and cogent reasoning for this conclusion has been provided, so that it cannot be said that the decision was perverse, irrational, or in error of law or fact.

19. In all the circumstances, I agree with the submission of Mr Greer that the Court of Appeal's decision in MS (Somalia) does not assist its case. On the facts of the present case, the judge reached a decision that was open to her on the evidence and for which cogent reasoning has been provide. It follows that I find no error of law in the decision.

Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law
2. The decision of the First-tier Tribunal stands and the appeal remains allowed.
3. I make no fee award.

Signed DMW Pickup

Upper Tribunal Judge Pickup

Dated **2 March 2020**