IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003684

First-tier Tribunal No:
PA/03600/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 May 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

The Secretary of State for the Home Department

Appellant

and

Mr Abdulquani Mohammed Hassan
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr F. Gazge, Home Office Presenting Officer
For the Respondent: Mr. O. Sobowale, counsel, instructed by Axion DWFM solicitors

Heard at Birmingham Civil Justice Centre on 23 March 2023

DECISION AND REASONS

1. The Claimant is a national of Somalia born on 1 January 1981. He arrived in the United Kingdom in 1994 as a minor and was granted indefinite leave to remain on 27 September 2001. Between 1997 and 2014 he committed a large number of offences, mainly relating to driving. As a consequence, the Secretary of State made a decision to deport him from the United Kingdom and a deportation order was signed on 18 July 2014 and sent to the Claimant's then representatives on 18 November 2014. The Claimant then made subsequent attempts over a number of years to have that deportation order revoked and also raised issues relating to his inability to return to Somalia.

2. Following a judicial review due to the delay in making a decision, there was a further decision by the Home Office on 28 April 2020 refusing the Claimant's claim that his human rights would be breached by his deportation to Somalia. The Claimant appealed and his appeal came before First-tier Tribunal Judge Nixon for hearing on 7th June 2022 in Birmingham.

3. In a decision and reasons promulgated on 29 June 2022, the judge allowed the appeal, finding that there were very significant obstacles to the Claimant's reintegration in Somalia, given that he left aged 13 and has no ties or contacts there. At [24] she found that he has demonstrated that there would be very significant obstacles to his integration into Somalian society, he has no family left in the country, his remaining family are living in the UK. He left the country over 26 years ago and has not returned in that time. Whilst he still speaks the language, with no contact with anyone in the country and Somalia having changed considerably in the last two decades, she found that he is now estranged from Somalian culture and society. She noted he has no-one in the country to assist him with reintegration or with finding accommodation or employment. When considering this aspect, she took into account that he has physical limitations from being shot in Somalia which would limit his employment prospects. She accepted as credible the evidence of his wife that she would be unable to fund another household as she will be supporting herself and their four children. Accordingly the judge found that the Claimant has satisfied the criteria of Exception 1 to paragraph 399A of the Immigration Rules.

4. The Secretary of State sought permission to appeal to the Upper Tribunal on 1 July 2022 in the following terms:

"The Judge of the First-tier Tribunal has made a material error of law in the Determination.

The Judge of the FTT materially erred in finding the appellant met Exception 1, Private Life exception to deportation.

INADEQUATE REASONS

The Judge of the FTT failed to give adequate reasons for finding there would be very significant obstacles to the appellant's integration on return to Somalia.

The Judge of the FTT failed to give adequate consideration to whether the appellant had any family members still living in Somalia and whether he had made any attempts to trace any family there.

The Judge of the FTT failed to give adequate consideration to the appellant's ability to secure employment and support himself on return. The Judge found that there would be no linguistic barriers as the appellant still speaks the language, and the evidence established that the appellant had gained qualifications and employable skills in the UK. Although the appellant had some mobility problems as a result of an injury to his leg and hip in Somalia, his evidence was that he worked in the construction industry and supported his family in the UK.

Whilst it is accepted that the appellant would face some difficulties on return to Somalia it is submitted that the Judge of the FTT erred in concluding that there would be very significant obstacles to his integration.'

5. Permission to appeal was granted in a decision by First-tier Tribunal Judge Seelhoff on 25 July 2022 where he held *inter alia*:

> *"3. The consideration of significant obstacles takes up half of one paragraph of the decision [24]. This is brief. The judge appears to have accepted the evidence of the Appellant at face value on this point without considering whether he is credible. The judge has also not considered the case of OA (Somalia) Somalia CG [2022] UKUT 00033 (IAC) which discusses the nature of family ties in the Somali community.*
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> *4. The decision gives some further cause for concern having been considered in the context of the Rules as opposed to the Statutory framework in line with the decision in Binaku (s.11 TCEA; s.117C NIAA; para. 399D) [2021] UKUT 00034 (IAC), however this may not have a significant impact on the decision in this case.*
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> *5. The grounds disclose an arguable error of law and permission is granted."*

Hearing

6. At the hearing before the Upper Tribunal, Mr Sobowale sought permission to rely on the record of proceedings before the First-tier Tribunal and sought time to engage with Mr Gazge as to whether they could agree that the record of proceedings was accurate. This was in order to ascertain from the record the Claimant's evidence as to the whereabouts of his family members. The agreed record provides that there is one family member in Kenya and the others are all in London.

7. Mr Gazge then made submissions on behalf of the Secretary of State. He submitted that whilst he accepted from the record of proceedings that contacts in Somalia would have been addressed in the hearing, what remained in dispute and was not mentioned was whether the Claimant had made any attempts to trace any family members there. He submitted that the judge only touched on this briefly at [24] of the decision and that the judge accepted much of the evidence on face value without considering whether or not it was credible.

8. Mr Gazge further submitted that the judge had not considered the judgment in *OA (Somalia)* (op cit) as this was not addressed at all in the decision and that this was relevant because if there were relatives in Somalia then the culture is that assistance would always be available from those family members, but this was not explored by the judge. I pointed out to Mr Gazge that according to the Record of Proceedings, the contents of which had been agreed, there was discussion of the country guidance decision in *OA (Somalia)* and submissions were made, in particular on behalf of the Secretary of State.

9. The note in the Secretary of State's record of proceedings is that the representative for the Claimant at that stage was Ms Rutherford of Counsel, who confirmed that in the light of the country guidance decision in *OA (Somalia)* the asylum point was not being strongly relied upon, but rather the emphasis was on the Claimant's rights under the deportation paragraphs of the Rules, paragraph 398 and his relationship with his children and his private life. Mr Gazge maintained that although there had been discussion of the decision in *OA (Somalia)* it had not been taken into account by the judge when reaching her decision.

10. In his submissions, Mr Sobowale took issue with the characterisation of *OA (Somalia)* as stating that there would always be assistance available as it did not go that far. He submitted in respect of the prospects of employment and any implicit degree of physicality had to be considered in light of the evidence and the position was that because of his disability the Claimant works with plant machinery in a seated position and that this is relevant to the issue of potential employment. He drew attention to a certificate dated 5 August 2008 in the supplementary bundle that made this clear.

11. With regard to the suggestion that the Claimant failed to give reasons for a failure to find family members in Somalia, Mr Sobowale drew attention to the fact that from the record of proceedings it was clear that examination-in-chief focused significantly on the topic of family in Somalia and it was apparent that there was absolutely no member of the Claimant's extended family present in Somalia. In fact he did not come directly to the UK from Somalia but from a refugee camp in Kenya and that all his family, apart from one member in Kenya, are now in the UK.

12. Mr Sobowale drew attention to the fact that the judge made specific findings that the Claimant and his partner were credible. They were both extensively cross-examined about their relationship and the judge found them to be honest in relation to their lack of connections with Somalia. Therefore, it cannot be said that the judge approached this evidence erroneously. Mr Sobowale added that it was known that the Claimant's parents and sisters are dead and that none of this evidence, as to the existence of family members and where they were residing had at any stage been challenged by the Respondent. Therefore, the judge was pushing at an open door. The Claimant has had no contact with any family members, if indeed they still exist in Somalia and the judge's consideration of the evidence was more than adequate. In relation to the Claimant's ability to secure employment and support himself on return, the judge correctly noted that linguistic barriers were limited, however, in her view, it would be difficult, but not impossible for him to establish himself and take employment in Somalia.

13. In the country guidance case of *OS (Somalia)* at [8] of the headnote there is reference to casual and day labour being available to returnees, but that a guarantor may be required for some positions. Having heard the evidence and the Claimant's physical limitations and relatively modest means, the judge clearly took the view that he would not be able to work as a day labourer because of his disabilities and there would be slim to no chance of him working in plant machinery in Somalia as a self-employed person with no connections.

14. As to the point that the judge's reasoning was set out fairly shortly, Mr Sobowale submitted that the fact it may be brief does not mean it is devoid of reasoning. The judge highlighted eight points that led her to reach her conclusion. A Tribunal is not obligated to make reference to any piece of evidence, the judge provided factors relevant to her consideration and provided adequate reasons for her findings. Her approach to the case generally was balanced. Within the same decision she made a finding against the Claimant in relation to Exception 2 and it cannot be said therefore that she has not weighed the evidence very carefully. In relation to the country guidance decision at (5) this states that a returnee with family and diaspora links would be unlikely to be more than a few small degrees of separation from a family or clan member and also material is whether a member of the returnee's household has made any remittances to Somalia. In this case, the Claimant's extended family have been outside Somalia since the 1990s. There is no-one to send remittances to so that factor is simply not present.

15. In relation to *Binaku*, Mr Sobowale sought to rely on [87] and [92] of that judgment and submitted that, in this particular case, whilst the judge should have looked at section 117C NIAA 2002 because it provided the statutory underpinning for the appeal, whereas the Immigration Rules reflected the Secretary of State's views of the deportation provisions, this was not fatal. He submitted that had the judge directed herself with regard to section 117C then she would still have reached the same conclusion because that provides that judges are directed to take into consideration the nature of the offending and this Claimant's offending was clearly at the lower end of the scale, which therefore reduces the public interest in deportation.

16. There was no reply by Mr Gazge on behalf of the Secretary of State.

Decision and Reasons

17. I find no material error of law in the decision of the First-tier Tribunal Judge. I gave my decision at the hearing and I now provide my reasons.

18. The Judge found that the Claimant met the requirements of Exception 1 to paragraph 399A of the Immigration Rules *viz* (a) the person has been lawfully resident in the UK for most of his life; and (b) he is socially and culturally integrated in the UK; and (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

19. The Judge's findings are set out at [24] where she states:

"*All three elements must fall in the appellant's favour for him to benefit from Exception 1 and I find that he has done so. I note that he has spent most of his life lawfully in the UK, having come to the UK in 1994 aged 13 and remaining lawfully, being granted ILR on 27th September 2001.*

The difficult question is whether he is socially and culturally integrated into UK society. Whilst there is no doubt that he has established a family life in the UK with a wife and children and he is working to support his family, his long list of convictions over a 16 year period has demonstrated a lack of

assumption of the core values of society and a serious discontinuity in integrating into society. On the other hand I note that he has not reoffended for almost 10 years and has become a functioning member of society since the making of the deportation order. The respondent failed to make a decision as to his application to revoke the order and the appellant continued to push for an answer rather than simply bury his head. I find that his persistence over the years indicates a genuine change on his part. I note that, as well as being a family man, he is a working man contributing to society and supporting his family. I have seen a number of qualifications he has obtained in order to better himself. I note that he has spent his formative years and been educated here, having come to the UK as a teenager. His remaining family members live in the UK. Taking all of these factors into account I am satisfied that he has turned over a new leaf and in the past 9 years, whilst awaiting a decision from the respondent and this appeal hearing, he has now demonstrated that he does not pose a risk of reoffending and has integrated into society.

I find also that he has demonstrated that there would be very significant obstacles to his integration into Somalian society. He has no family left in the country, his remaining family living in the UK. He left the country when he was 13, over 26 years ago and has not returned in that time. Whilst he still speaks the language, with no contact with anyone in the country, and Somalia having changed considerably in the last 2 decades, I find that he is now estranged from Somalian culture and society. I note that he has no one in the country to assist him with reintegration, or with finding accommodation or employment. When considering this aspect, I take into account that he has physical limitations from being shot in Somalia which would limit his employment prospects. I accept as credible the evidence of his wife, that she would be unable to fund another household as she would be supporting herself and 4 children. Accordingly I find that the appellant has satisfied the criteria of Exception 1."

20. The Judge's findings are challenged by the Secretary of State on the following bases:

(i) The Judge failed to give adequate reasons for finding there would be very significant obstacles to the appellant's integration on return to Somalia.

(ii) The Judge failed to give adequate consideration to whether the appellant had any family members still living in Somalia and whether he had made any attempts to trace any family there.

(iii) The Judge failed to give adequate consideration to the appellant's ability to secure employment and support himself on return

21. In relation to the first ground of appeal, I consider that the First tier Tribunal Judge gave adequate reasons for finding there would be very significant obstacles to the Claimant's integration in Somalia. She found, based on the evidence, that he left Somalia 26 years previously aged 13 years, had no family members left there and no contact with anyone there who could assist with finding employment, accommodation and reintegrating.

22. In relation to the second ground of appeal, at Mr Sobowale's request I had regard to the record of proceedings, the contents of which were agreed between both representatives. It is clear that the Claimant was asked about the whereabouts of his family members and that there is one family member in Kenya and the rest are all residing in London. Consequently, there is no substance to ground 2 of the grounds of appeal. The Judge heard the Claimant's evidence and accepted that evidence. Given his long absence, in excess of 26 years, it is not surprising that he no longer has family members in Somalia. In these circumstances, there cannot be any point in attempting to trace people who are simply not there.

23. Contrary to ground 3, it is clear that the Judge gave reasons for finding that the Claimant would struggle to find accommodation and employment, both because of his long absence and lack of any family or network to assist him in Somalia and also because he has a physical limitation arising from having been shot, which would limit his employment prospects. Mr Sobowale drew my attention to the fact that the Claimant works with plant machinery in a seated position and this was corroborated by a certificate dated 5 August 2008 in the supplementary bundle.

24. The grant of permission to appeal to the Secretary of State raises further issues, of that Judge's own volition, namely: that the Judge's consideration of significant obstacles is brief; she appears to have accepted the evidence of the Claimant at face value on this point without considering whether he is credible and she had also not considered the case of *OA (Somalia)* Somalia CG [2022] UKUT 00033 (IAC). Note was also made of the decision in *Binaku* (s.11 TCEA; s.117C NIAA; para. 399D) [2021] UKUT 00034 (IAC) which mandated that decisions in deportation appeals should be made in accordance with the statutory framework, rather than the Rules, however it was acknowledged this may not have a significant impact on the decision in this case.

25. The representatives addressed me in respect of these additional points. I do not consider that the relative brevity of the Judge's reasoning in this case casts doubt on the adequacy of that reasoning as to why she found that there would be very significant obstacles to the Claimant's reintegration in Somalia. As to the Claimant's credibility, it does not appear from the record of proceedings that the Presenting Officer questioned the veracity of his account as to an absence of family members in Somalia. It is also clear from earlier in [24] that the Judge accepted that the Claimant had turned over a new leaf. Had she found the Claimant and his account not to be credible it was open to her to make findings accordingly. It was also open to the Judge to find him credible, which she did.

26. As to the country guidance decision in *OA (Somalia)* (op cit) it is clear from the record of proceeding that this was canvassed during the hearing and that submissions were made by both parties as to its impact. Therefore, it cannot be said that it was not before the Judge. I do not find, on the particular facts of this case, that *OA (Somalia)* is of assistance, given the Judge's findings of fact that the Claimant had been out of the country for 26 years, had no family members in Somalia and those in the UK live in London, some distance from the Claimant himself and absent any asylum or article 3 issues being raised.

27. I further find and accept Mr Sobowale's submission that whilst the Judge erred in failing to apply the statutory framework as per the decision in *Binaku (op cit)* this was not a material error. This is because the relevant provisions of the statutory framework ie section 117C(4) NIAA 2002 Exception 1 are materially the same as paragraph 399A of the Immigration Rules and thus it would have made no material difference in this particular case. As the Upper Tribunal make clear at [93]-[96] of the decision in *Binaku* as noted by Mr Sobowale in his submission, given that under section 117(C)(7) of the statutory framework consideration has to be given to the Claimant's offending history in terms of his convictions and given his offending was at the lower end of the scale which would reduce the public interest in deportation, this could only have benefitted him.

28. For the reasons set out above, I find no material error of law in the decision and reasons of First tier Tribunal Judge Nixon and accordingly I dismiss the appeal by the Secretary of State for the Home Department.

Rebecca Chapman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 April 2023