



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER **001384**
/2022
/2022

Case No: UI-2023-
PA/51663
IA/05824

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21 December 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

And

A M A

Appellant

(anonymity order made)

For the Appellant: Mr D Clarke, Home Office Presenting Officer.
For the Respondent: Ms S Khan Jackson, Lees Group Limited

Heard at Field House on 6th September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent and any member of her family or other person the Tribunal considers should not be identified is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent nor

other person. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. It is the Secretary of State who is appealing and for convenience I will hereinafter refer to the parties as they were in the First-tier Tribunal.
2. The appellant claimed protection in September 2018. He gave his birth as February 1995. He said he had arrived that day by boat, having travelled from Somalia on 6 September 2018. He said that he is Somali and of the minority Bajuni clan. He said that he fled his home in Chula island out of fear of Al Shabab. He referred to them shooting his parents.
3. On 14 April 2022 the respondent refused his claim. The respondent was of the view that he was Kenyan and not Somali. It was expected that return therefore would be to Kenya. The respondent considered his claim in the alternative, as he was a Somali national. The respondent had rejected his account and took the view Al Shabab would have no interest in him. The refusal went on to say that he could return to Mogadishu if he were Somali, even if he were Bajuni. The reasons for refusal then went on to consider sufficiency of protection in Kenya. Section 8 was raised in relation to credibility as he had travelled through various safe countries.
4. His appeal was heard in Manchester via video link on 25 January 2022 before First-tier Tribunal Judge Suffield-Thompson. He was represented by Ms Khan, as now. There was no presenting officer in attendance. An anonymity order was made which I continue.
5. The judge had a statement from the appellant and a Sprakab language report and an expert report from Prof Nurse as well as country information and case law. The judge did not hear directly from the appellant but heard submissions from his representative. The judge gave an extempore decision allowing the appeal. The judge subsequently provided written reasons.
6. The judge accepted that Prof Nurse was an expert on Somalia. Prof Nurse said that the appellant spoke a mixture of Swahili and Bajuni and whilst the Bajuni are Somali nationals, linguistically and ethnically they are not Somali. Rather they are a cross-border community living on the offshore islands adjacent to the mainland of Kenya and Somalia. Prof Nurse said the appellant had demonstrated generic knowledge and specific knowledge which he could not have acquired other than on the island. The doctor suspected he had grown up in Chula to parents who were not Bajuni. From the Sprakab report the respondent concluded he was from the coast of Kenya but Prof Nurse commented there was no evidence to support this view.
7. Prof Nurse commented on the Sprakab report, finding the interviewer did not speak Bajuni and spoke to the appellant in Swahili. It was a short interview, with the appellant only speaking for eight minutes and no follow up questions being asked.
8. The judge found great weight could be attached to the report and conclusions of Prof Nurse and no meaningful weight attached to the Sprakab report. The report from Prof Nurse was considered to be balanced and the judge concluded that the appellant had been consistent and was an honest witness. The judge found that he was Bajuni.

9. The judge then went on to consider the risk for him as such. The judge referred to the background information and concluded that as a member of the Bajuni clan he faced a real risk on return.
10. The judge considered return to Mogadishu rather than his home island. The judge refers to country information indicating an individual required family support and access to funds. The judge said the appellant had neither, having worked as a shepherd with no transferable work skills and without family support. The judge concluded the appellant was a Somali Bajuni who would be at risk on return and could not relocate to Mogadishu. The appeal was allowed on this basis.

The Upper Tribunal

11. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Seelhoff on 24 April 2023. Reference is made to paragraph 34 of the decision where the judge quotes an extract from the report of Prof Nurse to the effect the appellant had grown up in Chula to parents who were not Bajuni.
12. Mr Clarke said if the judge was wrong in finding the appellant was from a minority clan this infects the findings in relation to relocation. He suggested the appellant was from a majority clan and as such could settle in Mogadishu. I was referred to paragraphs 28 to 32 of the determination as indicators he is not a minority clan member.
13. Paragraph 13 of Prof Nurse's report states that the Bajuni are Somalis but are not ethnically or linguistically Somali. The respondent submits that the First-tier judge misunderstood the conclusions in the expert report. The respondent refers to Prof Nurse's evidence in the decision of ASA (Bajuni, correct approach, Sprakab) [2022]UKUT 00222. At paragraph 49 the expert refers to ethnic Somalis from the mainland flooding into the Bajuni islands intent on displacing the Bajuni. The argument was that if this was a mistake then it was relevant to the issue of return to Mogadishu and whether the appellant is a member of a majority clan rather than the minority Bajuni. The respondent argued the judge assessed relocation to Mogadishu on the wrong factual basis.

Consideration

14. The above illustrates just how complicated determining clans can be. The issue was further complicated was the respondent taking the view the appellant was not Somali or from Chula but Kenyan. Professor Nurse report accepts the appellant has grown up on Chula and is not Kenya. Reference is made to his local knowledge. However, whilst the professor finds he is Somali and from the island of Chula the opinion is that his antecedents are from Kenya and that the appellant is not a member of the Bajuni minority clan. It is not made clear what, if any clan, the appellant is from on this basis.
15. I find that the First-tier Tribunal Judge misunderstood the content of Professor Nurse's report in this regard. She has taken it that he is a minority Bajuni clan member whereas this is not what the professor was indicating. This error then infects her assessment about the risk for him if he relocated to Mogadishu.
16. It is my conclusion that there is a material error in the First-tier Tribunal Judge in taking it that he is a Bajuni minority clan member. It will be necessary to have a rehearing in the First-tier Tribunal to determine whether he is a Bajuni minority clan

member or someone who has grown up on Chula, is a Somali national but whose antecedents are in Kenya. In the latter situation the tribunal will need to consider what if any tribe is associated with and how this affects the issue of relocation to Mogadishu.

Decision

A material error of law has been demonstrated in the decision of First-tier Tribunal Judge Suffield-Thompson and that decision can no longer stand. The matter is remitted for a de novo hearing in the First-tier Tribunal.

Francis J Farrelly

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date 18/12/2023