



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/02112/2013

THE IMMIGRATION ACTS

Heard at Field House
On 17th February 2014

Determination Promulgated
On 19th February 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR DAHIR DUBI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins (instructed by Irving & Co, solicitors)
For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Hembrough and Mrs V Street) by which, in a determination promulgated on 16th December 2013, it allowed the Appellant's appeal against the Secretary of State's decision to deport him on humanitarian protection grounds and under Article 3 of the ECHR but dismissed the appeal on asylum grounds.

2. The Secretary of State also sought permission to appeal to the Upper Tribunal in this matter but permission was refused by both a First-tier Tribunal Judge and on a renewed application by an Upper Tribunal Judge.
3. Accordingly, what is before me is the Appellant's appeal against the dismissal of his appeal on asylum grounds.
4. The origin of this appeal is that the Appellant is a Somali citizen who came to the UK, aged 11, in 1999 with his older brother. His asylum application was refused in 2000 but as a minor he was given exceptional leave to remain and ultimately in 2005 Indefinite Leave to Remain. He and his brother were placed with foster parents and having moved on to independent living the Appellant is now back living with his foster family.
5. The proceedings came about following the Appellant's conviction, in September 2009, on his guilty plea, of offences of robbery and possessing an offensive weapon for which he was sentenced to 30 months imprisonment. That conviction led the Secretary of State, eventually, to make a decision to deport him and she signed a deportation order on 19th October 2013.
6. When the Appellant's appeal came before the First-tier Tribunal the Appellant claimed that as a member of a minority clan, namely a subdivision of the Rehanwweyn with no links whatsoever or family support in Somalia he would be at risk of persecution on return.
7. The Secretary of State had certified the asylum claim under Article 33 (2) because having received a sentence in excess of two years imprisonment pursuant to section 72 (3) of the Nationality, Immigration and Asylum Act 2002 he was presumed to have been convicted of a particularly serious crime and a danger to the community and as such not entitled to the protection of the Refugee Convention.
8. The Tribunal considered and concluded at paragraph 53 of the determination that the index offence was an isolated incident and the Appellant did not currently represent a danger to the community and accordingly it was not satisfied that he fell to be excluded from the protection of the Refugee Convention. They then at paragraph 54 noted that he was unable to point to a specific threat awaiting him in Somalia but the Tribunal also commented that because of his age when he left he was unable to recall much about his life there other than that his family were treated as second-class citizens and that their home was raided by armed men. The Tribunal referred to the Letter of Refusal dated 7th October 2013 as containing a forensic analysis of the Appellant's likely clan membership and affiliations and the associated consequences on return. The Tribunal noted that it appeared to be accepted that he was from the clan he claimed and that that clan was particularly vulnerable to abuse. The Letter of Refusal considers the Appellant's clan membership from paragraph 28. At paragraph 31 the Secretary of State suggests that the clan is neither minority nor majority. However, the preceding paragraph in the Letter of Refusal indicates that members of the Appellant's clan are subject to repression and abuse. If the Appellant

is a member of a clan which is particularly vulnerable and subjected to abuse and in the absence of any support or ties in Somalia then the Tribunal's finding that he would not be at risk of persecution for a Convention reason is illogical bordering on perverse. I therefore find that in so far as it is found that the Appellant belongs to a non-majority clan that is vulnerable to abuse but is not at risk of persecution for a Convention reason the First-tier Tribunal erred. I therefore set aside its decision in relation to asylum and humanitarian protection and redecide the appeal in that respect only. On the evidence quoted by the First-tier Tribunal and set out in the Letter of Refusal and in accordance with current country guidance the Appellant, would be at risk of persecution on return to Somalia on account of his clan membership and therefore is entitled to asylum. As asylum and humanitarian protection are mutually exclusive it follows that his appeal for humanitarian protection must fail.

9. For the above reasons the appeal to the Upper Tribunal is allowed.

Signed

Date 17th February 2014

Upper Tribunal Judge Martin