



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

Appeal Numbers: HU/12683/2015
PA/07093/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 27th July 2017**

**Decision & Reasons Promulgated
On 10th August 2017**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

[A A]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Jorro, of Counsel, instructed by Wilson Solicitors LLP
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Somalia who seeks to appeal against a decision to make a deportation order dated 19th November 2015 and against a decision to refuse a protection and human rights claim dated 6th July 2016.
2. The appeal came before First-tier Tribunal Judge Walters on 3rd February 2017 and was dismissed.

3. Challenge was made, however, to the decision and permission to appeal to the Upper Tribunal was given, particularly in the light of the way in which the evidence of Ms Harper was considered and the approach taken to the appellant's mental health generally.
4. Mr Jorro in his submissions sought to challenge the correctness of the decision essentially on four grounds, namely:-
 - (1) On the findings made as to the Somali language proficiency of the appellant.
 - (2) On the findings made as to financial support available to the appellant.
 - (3) On the lack of consideration of the expert evidence of Ms Mary Harper.
 - (4) On the lack of consideration as to the appellant's mental health.
5. Mr Jorro expanded on those matters in the course of his submissions.
6. As to the findings made by the Judge at paragraph 48 of the determination the appellant "speaks a considerable amount of Somali"; he argues that in the light of the evidence that was presented that such was not a reasonable conclusion to arrive at. For my part I find that the Judge was perfectly entitled to come to that conclusion in the light of the evidence that was presented.
7. In terms of financial support the issue was of remittances. The appellant was part of a very large family, having three brothers, two of whom were employed, and four sisters, two of whom were in employment. The appellant's mother, who is on benefits, nevertheless was funded for a holiday to Dubai on three occasions. Mr Jorro submits that it is not logical for the Judge to move from that scenario to a finding that remittance would be available to the appellant.
8. Once again, I do not uphold that challenge. It seems to me that the Judge approached the matter in a logical and reasonable manner.
9. The more significant challenge relates to the way in which the expert evidence of Mary Harper in her report of 27th January 2017 was dealt with. She sets out her experiences in some detail in the report and concludes that the appellant would face great difficulties were he to be returned to Mogadishu, both in terms of accommodation, finance and employment. She notes the absence of family or clan associations to assist him. Comment was also made as to the mental health of the appellant and the danger that that would place him in and the social reaction with others. She emphasised that there was a lack of tolerance of mental difficulties and that thereby the appellant may well suffer humiliation or indeed ill-

treatment. There was evidence from Dr Nauroze that the appellant was suffering from mental and behavioural disorders.

10. It is submitted that in considering the safety of return, scant regard had been paid to the expert report of Ms Harper and that the Judge had unduly minimised the mental difficulties that the appellant had. It was not simply that he was a drinker of alcohol and a smoker of cannabis but that he had serious mental issues arising from that abuse. The diagnosis of Dr Nauroze, in his report of 20th April 2016, was that the appellant was most likely to be suffering from severe depression with psychotic symptoms.
11. Mr Jorro submits that, in the light of that evidence, there had been an inadequate consideration of the risk on return, particularly given the importance attached to that matter by the Tribunal in the leading case of **MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)**.
12. Mr Jorro highlights the head note of that case, in particular head note (ix), and the assessment that should be conducted which should take into account the mental health of an individual.
13. I do not dwell at any great length upon those submissions because Mr Duffy, at the conclusion of hearing, conceded that the assessment by the Judge of the evidence of Ms Harper and the consideration as to mental health were inadequate in all the circumstances in determining the safety of return.
14. Such matters were not only relevant to the issue of asylum but also to human rights as to whether or not there were any insurmountable obstacles to the appellant returning to Somalia. Those factors, as highlighted, may indeed be capable of amounting to significant obstacles to reintegration and the matter had not been expressly considered by the Judge in that context.
15. In those circumstances I was invited to set aside the decision and to remit it to the First-tier Tribunal for a rehearing on all issues. This I do.
16. Mr Jorro, however, raised one matter which will need to be resolved prior to the next substantive hearing of the appeal and that relates to the jurisdictional and legal basis upon which it has come before the Tribunal by way of appeal. A deportation order has been made on the basis that the appellant is a foreign criminal and the automatic deportation under Section 32 of the UK Borders Act 2007.
17. It has been noted, however, under the interpretation Section, Section 38(1)(b), such does not include a reference to a person who is sentenced to a period of imprisonment of at least twelve months only by virtue of being sentenced to consecutive sentences amounting in aggregate to twelve months. Although it is entirely apparent from the history of the

appellant that the he is a persistent criminal, only one of the sentences imposed after 2007 amounted to twelve months. That having been said, the sentence of twelve months' imprisonment imposed on 7th May 2015 is said to have arisen by the activation of a number of consecutive sentences, none of which amounting in themselves to twelve months. Thus he submits that for the purposes of the UK Borders Act 2007 (Commencement No. 3 and Transitional Provisions) Order 2008 the appellant is not a foreign criminal as so defined so as to justify the imposition of a deportation order.

18. He accepts that there are of course other avenues by which a deportation order can be issued, particularly for someone who has committed a particularly serious crime or indeed for a persistent offender. He submits that that matter needs to be considered prior to the next hearing as, clearly, whether or not the appellant is a persistent criminal is a matter very relevant to the proportionality of removal and the lawfulness of the decision under challenge.
19. Mr Duffy undertook to refer the matter to the respondent for consideration as to whether the decision as to deportation under the Act of 2007 is to be maintained or amended or withdrawn.
20. In that connection I note that the decision to refuse a protection and human rights claim of 6th July 2016 is predicated on the basis that the appellant is someone subject to deportation. No mention is made of the appellant being a foreign criminal under that decision but it was noted particularly in paragraph 39 of the decision that the offence met the threshold of "serious". It seems to me that it is important to clarify the basis of the deportation order that is made and whether indeed it was made under the correct Statutory provision or consideration.
21. In all the circumstances therefore the appeal of the appellant before the Upper Tribunal is allowed to the extent that the decision of the First-tier Tribunal is set aside.
22. In accordance with the Senior President's Practice Direction and in the light of a significant requirement of fact-finding and credibility assessment, the matter is remitted to the First-tier Tribunal for a rehearing. The legal basis for the deportation order of course should of course be clarified as a preliminary issue in those proceedings if not before.

Notice of Decision

The appeal is allowed to the extent that the decision of the First-tier is set aside, the appeal to be reheard by the First -tier tribunal.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read "P. Q. King". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Signed

Date 4 August 2017

Upper Tribunal Judge King TD