Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06290/2017**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons**
On 30 April 2018	**Promulgated**
	On 1 May 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Pickering, Counsel
For the respondent: Ms Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. I have anonymised the appellant's name because this decision refers to his international protection claim.

2. This is an appeal by the appellant, a citizen of Somalia, against a decision of the First-tier Tribunal ('FTT') dated 11 September 2017 in which it dismissed his asylum appeal.
3. The appellant fears that upon return to Somalia he will be subjected to ill-treatment by Al-Shabab given his claimed history: his father was killed by the group and the appellant escaped from them. The FTT did not accept the appellant's credibility and gave comprehensive and detailed reasons for this when dismissing his appeal.

4. In a decision dated 11 January 2018 the Upper Tribunal ('UT') granted permission to appeal observing it to be arguable that the FTT's findings did not take account of the background material and the conclusions reached in respect of the screening interview and entry clearance application were inadequately reasoned. The UT made it clear that permission to appeal was granted in relation to all the grounds of appeal. In a rule 24 notice dated 5 March 2018, the respondent opposed the appeal.

5. The matter now comes before me to determine whether the FTT decision contains an error of law, and if so whether it should be set aside.

Hearing

6. At the beginning of the hearing, upon my indication of provisional views, Ms Petterson distanced herself from the rule 24 notice and agreed that the decision needs to be remade in its entirety. She was entirely correct to do so for the reasons I set out below. That is sufficient to dispose of issue.

7. Both representatives agreed that the error of law is such that the decision needs to be remade completely. I had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I decided that this is an appropriate case to remit to the First-tier Tribunal.

Error of law discussion

8. There are three broad strands to the grounds of appeal, which I address in turn.

Approach to evidence on the appellant's clan

9. The FTT rejected the appellant's claim to be a member of the Arab Salah clan for mainly two reasons. Each of the reasons provided is problematic and impugns the overall finding on the appellant's claimed clan membership.

10. First, the observation that the very limited country background evidence available on this clan "*militates against*" the appellant's claim to be a member is irrational and fails to take into account relevant matters. The FTT appears to conclude that the clan are mostly to be found in Galkayo. This is based upon research undertaken by the Immigration and Refugee Board of Canada ('IRB') dated October 2001. The FTT has failed to take into account the huge changes in every aspect of Somalian society since that time as a result of the civil war and its consequences and no acknowledgment has been given to the general movement of people to the capital city Mogadishu. In addition, it is very difficult to see how it could be said that the appellant's claim to come from Mogadishu and not the area that most of his clan are to be found can be said to not be reasonably likely, given the limited information in the public domain concerning the clan.

11. Second, the FTT appears to assume that because there is an absence of evidence that the Arab Salah is a minority clan, it must follow that it is not. This misapplies the relevant standard of proof. There was no evidence before the FTT that the clan was a minority or majority clan. The appellant's own consistent evidence is that he and his family members are from a minority clan. Given how small and scarcely known the clan is from the country information available, and the absence of any evidence to support the possibility that this small mostly unheard of clan could be a majority clan, it is difficult to see how it could be anything other than a minority clan, given the applicable low standard of proof.

Screening interview

12. The FTT has drawn adverse inferences from the appellant's responses at the screening interview ('SI'), which took place on the day of his arrival in the UK on 19 December 2016. The reasons provided for these are inadequate, inaccurate and fail to take relevant matters into account. More generally, the FTT has completely failed to take into account the likely difficulties faced by the appellant at an interview held almost immediately upon arrival after a long and arduous journey – see the helpful observations in YL (Rely on SEF) China [2004] UKIAT 00145. At 3.3 of the SI the appellant clearly described having left Somalia by road two weeks ago before flying from Ethiopia via another country and arriving in the UK on the morning of the SI.

13. More specifically, the FTT has identified and drawn adverse inferences from three issues in which the appellant is said to have contradicted himself at the SI. A careful scrutiny of the SI and later substantive asylum interview ('AI'), which took place on 21 April 2017, makes it clear that these cannot rationally be described as contradictions or discrepancies. First, the FTT has found that the appellant at first "*said*" that his father died on 4 September 2015 but

then changed this to 4 December 2015, before saying again that it was the first date provided. However, when the different dates were put to the appellant at part 7 of the SI he said this "*I kept saying September 4th. It was 4th September*". In effect the appellant was explaining that he never said "*December*". This is supported by his answers at Qs 72 and 73 of the AI in which he explained clearly that he knew the date and time his father was killed "*very well*". After all, he claimed he was present when his father was murdered in front of him. In addition, the appellant explained that he maintained it was the 9th month and that the interpreter must have misheard him given the background noise. Such interviews often take place with an interpreter over the phone and it is difficult to see why the FTT did not accept the appellant's apparently credible explanation that there was a mistake due to a misunderstanding, which was very soon corrected.

14. Second, the FTT considered that the appellant "*originally gave*" the immigration officer a different name and date of birth and "*no explanation has been given by him for this discrepancy*". As pointed out in the grounds of appeal, this finding is unsupported by any evidence. Rather, when the SI is read as a whole, it appears that certain sections were completed prior to the SI itself and this information was typed in. The appellant explained that he had previously used the name that was typed but his true name and date of birth was provided immediately, hence at 1.1 the typed name was crossed out and replaced with his true name. It is noteworthy that this point was not taken against the appellant's in the respondent's decision letter or apparently put at the hearing.

15. The appellant clearly explained right at the beginning of the AI that the SI inaccurately stated that he did not have a wife and children. The FTT considered the appellant's explanations for this to be different, yet the appellant has consistently said that when his solicitor read the SI back to him, he realised there was a mistake, and corrected this promptly.

Plausibility

16. The FTT appears to have considered the following to be implausible: the appellant's father would be known to and recognised by Al-Shabab when they were outside his home area; the appellant's father did not request assistance from the international forces when threatened by Al-Shabab; the appellant's escape from a moving vehicle when being transported by Al-Shabab. The FTT predicated these adverse credibility findings on a conclusion that the described behaviour in the context of Somalia is implausible. No reasons are provided for this. No attempt has been made to reconcile this finding with the country background evidence regarding the power held by Al-Shabab at the time.

17. In KB & AH (credibility-structured approach) Pakistan [2017] UKUT 491 (IAC) the Tribunal recently considered the approach to the 'credibility indicators' in the respondent's policy and said this regarding the 'plausibility indicator':

> "28. Second, Mr Wilding's concession rests the respondent's case on [lack of] plausibility, an indicator or factor that has been seen by the Tribunal and the courts - as is indeed reflected in this same Instruction - as one that, although in itself valid, requires a certain degree of caution in its application. Thus in **HK v Secretary of State for the Home Department** [2006] EWCA Civ 1037 case at [28]-[30] Neuberger LJ stated:
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> > "28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).
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> > 29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:
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> > 'In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."
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> > 30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".
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> 29. Reflecting much the same caution, paragraph 5.6.4 of this Home Office Instruction invokes, inter alia, what was said in **Y v Secretary of State [2006] EWCA Civ 1223**:

> "[I]n [**Y**] the Court of Appeal stated that in regarding an account as incredible the decision-maker must take care not to do so merely because it would not be plausible if it had happened in the UK. Again, underlying factors may well lead to behaviour and responses on the part of the claimant which run counter to what would be expected."
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> 30. The reference by Neuberger LJ at [28] of **HK** to the need to consider factors related to plausibility along with "other familiar factors... such as consistency" is also illustrative of the need to avoid basing credibility assessment on just one indicator. We would add that even when focusing just on plausibility, it is not a concept with clear edges. Not only may there be degrees of (im)plausibility, but sometimes an aspect of an account that may be implausible in one respect may be plausible in another.
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> 31. It seems to us that the indicators identified in the Home Office Instruction (which can be summarised as comprising sufficiency of detail; internal consistency; external consistency; and plausibility) provide a helpful framework within which to conduct a credibility assessment. They facilitate a more structured approach apt to help judges avoid the temptation to look at the evidence in a one-dimensional way or to focus in an ad hoc way solely on whichever indicator or factor appears foremost or opportune."

18. When the decision is read as a whole, the FTT impermissibly speculated in order to reach the conclusion that there was a "*very high degree of implausibility*" in the appellant's claims. In addition, the FTT has failed to take into account the detail provided by the appellant regarding his escape. He believed he was being taken to his death (see Q84 of the AI) and for that reason was able to take the risk of jumping from the moving vehicle and running 'for his life'.

19. The above errors of law have infected the credibility findings made, such it is agreed that the decision needs to be remade de novo.

Decision

20. The First-tier Tribunal decision contains an error of law. Its decision cannot stand and is set aside.

21. The appeal shall be remade by a judge other than First-tier Tribunal Judge Cope in the First-tier Tribunal de novo.

Signed:
Ms M. Plimmer
Judge of the Upper Tribunal

Date:
30 April 2018