



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

Appeal Number: PA/06843/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 1 November 2018**

**Determination & Reasons
Promulgated
On 28 November 2018**

Before

**UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE LATTER**

Between

**BASHIR ROBLE SALAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Bond, instructed by Freemans Solicitors

For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal with permission against the decision of the First-tier Judge who dismissed his appeal against the respondent's decision of 16 May 2018, refusing asylum and humanitarian protection.
2. The appellant has been in the United Kingdom since January 2014, having applied for a family reunion visa from Uganda. On 16 June 2017 he

applied for indefinite leave to remain in the United Kingdom as the dependent spouse of Sahara Ali Said. That application having been refused in November 2017, he made his asylum claim on 6 December 2017.

3. The essence of the appellant's claim is that he is a member of the Sheekhaal clan. In 2008 Al-Shabaab had raided the farm he worked on in order to take some livestock and when he refused they detained his father which forced him to pay a ransom to secure his freedom. In 2009 the military returned to the family farm in order to kidnap his sister. The appellant tried to defend her but he was beaten and his sister was kidnapped. Al-Shabaab returned in 2009 and took the livestock by force and in 2010 they again raided the family farm and he was beaten and detained for three weeks, though he managed to escape. He fled to Uganda, from there he made contact with his wife who had come to the United Kingdom and he joined her here as set out above.
4. The judge noted the background evidence concerning the degree of control that Al-Shabaab has over rural areas in Somalia. He noted the guidance set out in MOJ and Others [2014] UKUT 00442 (IAC). The judge considered that the appellant's case bore some limited consistency with the objective country material to the extent that his case was that he was targeted in a rural setting and the position was that Al-Shabaab retained a degree of influence in rural settings which could in some cases extend to control over those areas. However, noting the background evidence as to the nature of Al-Shabaab and its activities, the judge considered that the treatment meted out to the appellant was at variance with the practice of Al-Shabaab to favour extreme violence, brutality and death. The judge considered that the appellant's claim conflicted with the country background material in that regard. The judge therefore did not accept the credibility of the appellant's claim as to what he said happened to him in 2008, 2009 and 2010. He considered it to be inconsistent that the appellant claimed to be attached to his sister but did not claim to have taken any steps in order to secure her return.
5. The judge also considered that the appellant's account of being a member of a minority clan bore little examination. If that were the case, then in the judge's view he would have had much greater and deeper power of recall about the nature of the clan set-up in Somalia, including being more familiar with the precise role and identity of his own clan within that wider framework and would have been much more aware of the names, background details and the history of the clans in question. The judge considered he was evasive in the asylum interview and sought to deflect questions by reference to what his father had told him or his wider family situation about the affiliation of his clan with other clans and the details about the sub-clans to which the Sheekhaal clan was affiliated. The judge concluded that his knowledge of the clan situation in Somalia was minimal, to say the least. The judge agreed with the respondent's view that he had sought to establish his status as a member of a minority clan for the sole

purpose of demonstrating that he would be without support, assistance or wider protection from his clan or the wider network of clans in the face of any threat he faced from Al-Shabaab.

6. The judge went on then to conclude that he did not accept the credibility of the claim, bearing in mind also the delay in making the claim and the appellant's conduct in remaining in the United Kingdom when the circumstances which permitted him to stay no longer continued to obtain (the marriage broke down about a year after his arrival in 2014 but his application for asylum was not made until 2017).
7. The judge ascribed no significance to the fact that the appellant's wife had been granted asylum. He did not have the details of her claim and the appellant had not provided any basis for the judge to conclude that his situation corresponded to hers in any way. There was but a minimal temporal overlap in that they had only spent some five weeks of normal married life together in Somalia.
8. The judge went on to consider that, taking the appellant's case at its highest, he did not fall into a risk profile which would mean he would be at risk of harm. The judge noted the country guidance that it would only be those of no clan or family support who would not be in receipt of remittances from abroad and who had no real prospect of securing access to a livelihood on return who would face the prospect of living in circumstances falling below that which was acceptable in humanitarian protection terms.
9. The judge noted that the appellant was a man of working age who had demonstrated his ability to flee unprepared to Uganda where he remained for some two years. On his account he was a member of a minority clan and access materials had been produced by the respondent which said that the Sheekhaal clan had privileged to all parts of Somalia due to their religious status. The judge considered that even if that were not the case, in his view there was nothing to suggest that the appellant would not be able to be part of the community of returnees from the West who were more likely to secure employment in Mogadishu at the expense of those who had never been away. He was of working age and there were no reasons to suggest he would not be able to work. The judge also dismissed the appeal under Article 8.
10. The appellant sought and was granted permission to appeal on the basis that the judge had erred in finding discrepancies between what the appellant said Al-Shabaab had done to him and his family and background evidence about their activities. It was also argued that the judge erred in considering that the appellant should have undertaken more of an effort in order to rescue/relocate his sister. Permission was granted on all grounds.
11. In her submissions Ms Bond first expressed concern about the fact that the decision of the judge in the wife's case had not been looked at to see what

she had said about matters such as the clan origin and her husband's experiences. She was also concerned that as early as the second paragraph in the decision the judge said that the appeal was dismissed.

12. Ms Bond accepted that the wife's determination was not before the Tribunal and hence could not go to show an error of law in the judge's decision, and also that the expression of the judge's conclusion at paragraph 2 did not represent a prejudgment but was more a matter of style, although she considered that it was unhelpful for the judge's decision to be structured in that way.
13. She went on to argue that the appellant's evidence was not inconsistent with the objective evidence. She referred for example to an information sheet from Refworld concerning the Sheekhaal clan which was quoted by the Secretary of State. It was to be noted that it was said there that whereas the Sheekhaal was spread throughout Somalian territory most were affiliated with the Hawiye clan but some members of the clan were nomadic and some lived in the coastal area and a third segment of the clan lived in eastern Ethiopia. This was consistent with what the appellant had said in answers at interview about where his father was from. He had said he was from Ethiopia or near Ethiopia. It was relevant to note the reference to "most" rather than the entire clan all being affiliated with the Hawiye clan.
14. The respondent also referred to the Home Office Country Policy and Information Note of July 2017 on Somalia (South and Central): fear of Al-Shabaab, at paragraph 5.1.7 which included a reference to Muduq, where the appellant in interview had said he was from, as an area or town where Al-Shabaab had some presence and control. Again, therefore there was a consistency between the appellant's evidence and the background evidence. As regards the "Clans in Somalia" report from 2009, and the reference to clans emanating from the south central parts of Somalia such as the Sheekhaal having privileged access to all parts of Somalia on account of their religious status, it might have been true in 2009 but that it did not necessarily follow that the same privileged access existed to all of Somalia in 2018. The use of the word "usually" was of relevance. The judge had been misled by a nuance in the evidence. There should also be noted the caution at page 14 of that document about the need to treat all asylum cases individually and note that generalised knowledge and information on clans and minorities was of very limited use when it came to assessing an individual's risk and that that was particularly true in asylum procedures where decisions made on the basis of generalisations as to the conditions of certain groups could lead to asylum decisions being made on false premises. It was relevant to note that the appellant came from a nomadic tribe and was a shepherd and he would be unlikely to know much about the reaches of the clans. The judge had gone off in a wrong direction and had drawn conclusions he was not entitled to draw and there were material errors of law in his decision.

15. With regard to the point we put to Ms Bond about the judge's alternative finding, even taking the claim at its highest, she argued that the entirety of the findings on the background evidence had been challenged so that must include this matter within the grounds. If the Hawiye still protected the appellant's clan that was one thing, but if they did not then it was something different and the totality of the findings on the background evidence had been challenged.
16. In her submissions Ms Kenny argued that the point about not considering the wider circumstances that had not been raised in the grounds, but any event the judge had been aware of the point and addressed it at paragraph 39 of his decision. It was for the appellant to make out his case.
17. Ms Kenny relied on the Rule 24 response. The judge had found many reasons for a lack of credibility. He had taken the evidence in the round. Paragraph 17 concerning the Clans in Somalia document was part of the Presenting Officer's submissions and not a part of the judge's decision. The judge had noted the points in the appellant's favour. He did not have a profile such as to put him at risk on return, in light of the treatment he had received, in the background evidence. His conclusion at paragraph 23 was based on the evidence, and also at 24 and 25. The judge had not been misguided as argued at paragraph 3 in the grounds with respect to paragraph 26 of the decision, but was entitled to find a lack of consistency. The same point could be made with regard to paragraph 29. The judge had taken a broad approach to the evidence and there was no material error of law in the decision. It was relevant to note such matters as the delay in applying and to attach weight to that.
18. Ms Bond had no points to make by way of reply.
19. We reserved our determination.
20. The challenge in the grounds is essentially with regard to the judge's adverse findings on credibility concerning the difference between what the appellant said happened to him and the actual conduct of Al-Shabaab members towards those opposing them, as set out in the background evidence. In the grounds it is argued that the judge had failed to consider that repressive regimes or state or non-state actors might act in a way that was unpredictable and not entirely consistent with documented accounts of persecution and therefore his account of his escape and treatment by Al-Shabaab might well be entirely consistent and credible.
21. However, the judge quoted from the background evidence concerning Al-Shabaab's activities in considering the three incidents in question where the appellant came to the adverse attention of Al-Shabaab. In our view it was open to him to conclude that the difference between the treatment meted out to the appellant and the treatment habitually metered out by Al-Shabaab members to those opposing them was a matter which justified

the judge's concern and the adverse findings of credibility made in that regard. As Ms Kenny pointed out, there were a number of bases for finding the appellant lacked credibility, and those include the section 8 point, where again we consider the judge was entitled to be concerned about the delay in making the claim after his situation in the United Kingdom changed when he separated from his wife.

22. As regards the appellant's clan membership, the judge was concerned about the appellant's evidence in this regard since he considered that if the appellant were a member of a minority clan he would have had the ability to provide much more information than he was able to do. The judge was concerned about such matters, for example the appellant not knowing whether the clan of which he claimed to be a member, could be found in other countries and could not highlight any distinguishing features between his clan on the one hand and the many other clans in Somalia on the other, save for the names of those clans. He did not know about any of the traditions that the clan of which he claimed to be a member engaged in nor whether it had a leader and said his father had never discussed it with him. We note Ms Bond's point that as a shepherd from a semi-nomadic tribe it is unrealistic to expect the degree of consistency that the judge had required. We consider however that the judge's findings in this regard were open to him. His concerns in this regard were properly reasoned. We note also Ms Bond's points about the fact that Muduq exists, the point that she made about the Refworld report and the location of the Sheekhaal clan. These points however do not in our view detract from the force of the judge's reasoning. We consider that it was properly open to the judge to doubt the appellant's credibility and not to accept that what he claimed had happened to him had indeed occurred, for the reasons given by the judge.
23. Nor do we agree with Ms Bond that the grounds can be said properly to incorporate a challenge to the alternative findings at paragraphs 40 and 41 of the judge's decision, taking the claim at its highest. The fact that there was a challenge to the decision cannot be said properly to import a challenge to alternative findings where that is not specified in the grounds of appeal, and indeed Ms Bond herself did not articulate any challenge to those two paragraphs, except to the extent that she took issue with the judge's interpretation of what was said in the "Clans in Somalia" document about the privileged access of the Sheekhaal clan to all parts of Somalia due to their religious status. We note of course the caveat expressed in that report and as emphasised at paragraph 14 the need to exercise care with regard to generalised knowledge and information and its limited use when it comes to assessing an individual's risk, but on the other hand it is in that same report that it is said that because of the religious status of the Sheekhaal they usually have privileged access to all parts of Somalia. The judge was entitled to rely on that provision in the report, and it has not been shown despite the fact that the report is some nine years old that it does not still hold good. This was a finding the judge came to in relation to the alternative consideration of risk, which the judge reached

as a consequence of assessment of relevant provisions of the country guidance in MOJ, which we have set out above. The judge noted the point of privileged access but said that even if that were not the case there was nothing to suggest that the appellant would not be able to be part of the community of returnees from the West who were more likely to secure employment in Mogadishu at the expense of those who had never been away. Again, we consider the judge's findings are firmly grounded in the evidence and were proper findings to come to as a consequence of the careful assessment he made of that evidence.

Notice of Decision

24. Bringing these matters together, we do not consider that it has been shown that the judge erred in law in any respect in his decision, and the decision dismissing the appeal on asylum grounds, humanitarian protection grounds and human rights grounds accordingly stands.
25. No anonymity direction is made.



Signed
Upper Tribunal Judge Allen

Date
22nd November 2018