



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07551/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 23 April 2018

Decision & Reasons Promulgated
On 26 April 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

M D

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by DGF, Solicitors, Glasgow

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. For reasons explained in her decision dated 19 July 2017, the respondent refused the appellant's protection and human rights claims and maintained her decision to deport him to Somalia. He appealed to the First-tier Tribunal.
2. FtT Judge Telford dismissed the appellant's appeal by a determination promulgated on 15 November 2017.

3. The appellant's grounds of appeal to the UT are stated in his application for permission filed on 29 November 2017. Under the heading, "Failing to apply properly or at all *MOJ and others (Return to Mogadishu) Somalia CG [2014] UKUT 00442*" they set out the following from the headnote:

(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

- circumstances in Mogadishu before departure;*
- length of absence from Mogadishu;*
- family or clan associations to call upon in Mogadishu;*
- access to financial resources;*
- prospects of securing a livelihood, whether that be employment or self employment;*
- availability of remittances from abroad;*
- means of support during the time spent in the United Kingdom;*
- why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

(x) Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.

(xi) It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.

(xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.

4. The grounds, amplified in Mr Winter's submissions, specify four alleged errors.
5. The first is that the appellant's evidence was that he had no family left in Somalia was not disputed by the respondent in her decision, and the judge failed to make a

finding on the material matter of whether the appellant had “family or clan associations to call upon in Mogadishu”.

6. Mr Matthews pointed out that the judge said at ¶19 that parties had agreed the case “truly turned on credibility” and concluded at ¶26, “On all aspects of his claim I find his evidence incredible”. No error was suggested in those passages. There was at ¶33 a finding that the appellant suppressed evidence as “his only way of making any headway on a submission of not being able to return to Somalia”; see also ¶13.
7. I find no error in the absence of a specific finding about family in Somalia. The matter was covered by the appellant’s failure to establish his contentions.
8. The second alleged error is the absence of a finding on the appellant’s prospects of employment on return. The refusal letter refers to employment in Burger King. Mr Winter said that was for a brief period, and pointed out that in his statement the appellant said he has never been in long term employment. Mr Matthews referred to ¶25, where the judge refers to the burden being on the appellant and to the generality of evidence and guidance that even members of the Reer Hamar (the appellant’s clan) can start life again in Mogadishu and do not face a life so abject as to require international protection.
9. I agree that the judge found that it was possible for the appellant to secure a livelihood in Mogadishu.
10. The third alleged error is misunderstanding the evidence in that (i) the judge failed to note the appellant’s evidence that his uncle died in 2015, which vitiates his finding that the appellant could receive remittances from abroad; and (ii) the judge was wrong to think that any family members other than his deceased uncle had supported the appellant, or would continue to do so.
11. The judge recorded at ¶12 the appellant’s oral evidence that his uncle had died. In saying at ¶33, “He lived with his uncle and half sister and that would be so should he leave detention”, there may have been a slip, but not one of any materiality. There plainly was a network of family members in the UK. Although the appellant failed to make the position clear (when it was for him to do so), Mr Matthews showed that it could be gleaned from his statements that he has his step-mother, 3 sisters, 2 brothers (or half-sisters and half-brothers) and an indeterminate number of cousins in the UK. The judge found at ¶33 that the appellant has wider family who “have supported him through thick and thin” and would continue to do so. There is no error in this respect.
12. The fourth alleged error is failure to take account of the appellant’s lengthy absence from Mogadishu, and absence of findings on circumstances in Mogadishu before departure and on access to financial resources.
13. The length of the appellant’s absence and his circumstances before departure, when he was a child, were matters obvious to the judge. It would be idle to think that they played no part in the decision. They did not need to be set out any more explicitly

than they were. The question of access to financial resources, either by finding employment or through remittances, is covered above by reference to the other grounds.

14. The underlying misconception in the grounds is that any void in the evidence should have led to findings in the appellant's favour. The country guidance establishes how a case may be made, and directs judges on matters to consider. It does not have the effect that where an appellant fails to establish the truth of his claimed circumstances, it is then for the tribunal to divine what they really are, and that being impossible, to take the appellant's case as made.
15. Separately and together, the grounds fail to show that the judge fell into any error of failing to apply country guidance.
16. The decision of the First-tier Tribunal shall stand.
17. The FtT made an anonymity direction. That may not have been necessary, but as the matter was not addressed in the UT, anonymity has been preserved herein.

A handwritten signature in black ink, appearing to read "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial "H" that loops around the first letter of the name.

24 April 2018
Upper Tribunal Judge Macleman