



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

**Appeal Number: PA/07404/2018**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 25 October 2019**

**Decision & Reasons Promulgated  
On 15 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**R  
(ANONYMITY DIRECTED)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant:

Ms G Patel (Counsel)

For the Respondent:

Mrs R Pettersen (Senior Home Office Presenting Officer)

## **DECISION AND REASONS**

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 21 February 2019 following a hearing of 7 February 2019. The tribunal's decision was to dismiss the claimant's appeal which he had brought against a decision of the Secretary of State for the Home Department (the Secretary of State), made on 15 May 2018, refusing to grant him international protection.

2. The background circumstances may be summarised as follows: The claimant was born on 13 February 1979. He claims to be a national of Somalia though the Secretary of State believes him to be a national of Tanzania. He entered the United Kingdom (UK) on 1 January 2003 and claimed asylum. His claim was refused on 26 February 2003 on non-compliance grounds. That refusal decision was not appealed. In due course (following either a fresh application or a revisiting of the initial application) the Secretary of State once again considered any possible entitlement to refugee status but, on 3 May 2005, once again refused to grant asylum. There followed various further representations and submissions eventually culminating in the refusal decision of 15 May 2018 mentioned above. At the hearing of 7 February 2019, the claimant argued before the tribunal that as a national of Somalia he would be persecuted upon return because he is gay and because he is a member of the minority Bantu clan. He asserted that the group known as Al-Shabaab would seek to kill him and that members of that group had murdered his parents in the past. He also provided some evidence of mental health difficulties.

3. The tribunal, having heard the claimant's oral evidence, believed very little of it. Specifically, the tribunal concluded he is not a national of Somalia; is not a member of the Bantu clan; is not gay or bisexual; is not (it found at least by implication) significantly impacted by mental health difficulties such that there would be a real risk of his committing suicide if the outcome of the proceedings went against him; and had not shown that removing him from the UK would represent a breach of his rights under Article 8 of the European Convention on Human Rights (ECHR).

4. An application was made for permission to appeal to the Upper Tribunal. The grounds primarily, though not exclusively, sought to criticise the way in which the tribunal had gone about reaching a conclusion with respect to the claimant's sexuality. Permission to appeal was granted and that grant was not limited. Permission having been granted the case was listed for a hearing before the Upper Tribunal (before me) so that it could be decided whether the tribunal had erred in law and, if it had, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative. The hearing was, in fact, a relatively short one because although Mrs Pettersen did not make any formal concession on behalf of the Secretary of State she freely acknowledged that the tribunal's reasoning had been sparse such that defending its decision was a difficult task.

5. I have concluded that the tribunal did err in law. Its reasoning as to the key issues with respect to nationality, sexual orientation and clan membership is set out in a passage running from paragraph 43 to paragraph 48 of its written reasons. It is, I think it is fair to say, difficult to discern from what is said, precisely why it was that the tribunal had reached adverse conclusions (from the claimant's perspective) with respect to all of those matters. I need not labour the point because of Mrs Pettersen's realistic stance before me.

6. In light of the above I informed the parties, at the hearing, that I was persuaded that the tribunal had erred in law through the giving of inadequate reasons with respect to a number of its key findings. I indicated that I would set aside the decision. There was then a discussion as to whether the case should be remitted or whether I should retain the case in the Upper Tribunal. I think it is fair to say that both representatives took the view that the former course would be the most appropriate. Given that I am not preserving any of the tribunal's findings I have decided that that is so.

7. So, there will be a fresh hearing of the appeal before a different Judge of the First-tier Tribunal. The tribunal which rehears the appeal will not be limited to a consideration of the reasons which have caused me to set aside the previous decision. Nor will it be confined to the evidence which was previously before the tribunal. It will start entirely afresh and reach its own findings and conclusions on the basis of whatever evidence is before it and whatever arguments are put to it.

### **Directions for the re-hearing**

- A. The Upper Tribunal having set aside the decision of the First-tier Tribunal, there shall be a complete re-hearing of the appeal before a different First-tier Tribunal judge. None of the previous findings and conclusions are to be preserved.
- B. The re-hearing shall take place at the Bradford hearing centre.
- C. All other directions regarding matters such as listing, time estimates and interpreter requirements shall be made by a judge of the First-tier Tribunal.

### **Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The case is remitted to the First-tier Tribunal for a complete re-hearing.

The claimant is granted anonymity pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall name or otherwise identify the claimant or any member of his family. This direction applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

**M R Hemingway**  
**Judge of the Upper Tribunal**  
**14 November 2019**