



22 November 2010

## PRESS SUMMARY

### **MA (Somalia) (Respondent) v Secretary of State for the Home Department (Appellant) [2010] UKSC 49**

**JUSTICES:** Lord Phillips (President), Lord Walker, Lady Hale, Lord Mance, Sir John Dyson SCJ.

#### **BACKGROUND TO THE APPEAL**

The issues raised in this appeal are: (1) the correct approach to the relevance of lies told by an asylum seeker in the assessment of real risk of persecution on return to his or her country of origin; and (2) how far it is legitimate for an appeal court to interfere with the assessment of facts made by a specialist tribunal on the grounds of error of law.

MA is a citizen of Somalia. He is a member of the Isaaq clan. He entered the UK illegally on 24 May 1995. He claimed asylum which was refused but he was granted exceptional leave to remain. In 1998 he was convicted of rape and indecency with a child and was sentenced to eight years' imprisonment. On 21 May 2002, the Secretary of State for the Home Department served him with notice of intention to make a deportation order. Following a series of failed appeals and fresh submissions, the Secretary of State made a deportation order on 5 April 2004 and removal directions were set. MA's further submissions were accepted by the Secretary of State as a "fresh claim" to asylum. The Asylum and Immigration Tribunal ("AIT") on 19 April 2007 accepted this claim but reconsideration was ordered on 26 February 2008, directed to the issue whether MA as a member of the Isaaq clan would be able to arrange protection against a real risk of physical violence if returned to Mogadishu. After hearing MA give evidence, the AIT concluded that MA had not told the truth about his links and circumstances in Mogadishu, and could not say that he had shown he would be at risk there contrary to Article 3 of the European Convention on Human Rights. The Court of Appeal allowed MA's appeal on the grounds that the AIT seemed "to be throwing up their hands in despair" and saying that "since [MA] has concealed the truth, they cannot make any relevant findings", and that had the AIT made an assessment, "they must have concluded that there was a real risk that he would not obtain the relevant protection", having regard to the lengthy period he had been in the UK, including 12 years in prison.

#### **JUDGMENT**

The Supreme Court allows the Secretary of State's appeal. The AIT did not err in their assessment of MA's lies and there was no error of law which warranted interference by the Court of Appeal.

#### **REASONS FOR THE JUDGMENT**

The Court recognises the difficulties facing the AIT in distinguishing truth from lies. A particular problem arises where, as in MA's case, the AIT has disbelieved the majority of the claimant's evidence, but there is objective evidence indicating that the majority of individuals with the characteristics of, or alleged by, the claimant would be at risk if returned to the home state: [21]. The Court of Appeal were faced with this problem in *GM (Eritrea)* [2008] EWCA Civ 833. The Court endorses the approach in *GM (Eritrea)*, the substance of which was not challenged in this appeal. Where the claimant's account is

rejected as incredible, he or she will only succeed where there is undisputed objective evidence which goes a long way to making good the shortcomings in the claimant's own evidence. This, in essence, is what Laws LJ meant in para 54 of his judgment *GM (Eritrea)*: [30].

The weight a lie has in each case is fact-sensitive. In some cases, the AIT may conclude that the lie is of no great significance. In others, where, for example, the appellant tells lies on a central issue in the case, the AIT may conclude that it is of great significance. The AIT in this case was rightly alive to the danger of falling into the trap of dismissing the case merely because the appellant has told lies. As recognised by the "Lucas direction" in the criminal context, people lie for many reasons: [32]-[33].

In MA's case, the central issue was whether MA had connections with powerful actors in Mogadishu. The AIT found that he had not told the truth about his links in Mogadishu. Accordingly, in MA's case, the AIT concluded that his lie was of great significance: [33]. The AIT's determination records the conflicts in the evidence given by MA about his connections with Mogadishu. The AIT then directed itself on the basis of *GM (Eritrea)* as to the significance of MA's lies. This direction was accepted by the Court of Appeal to be "impeccable". However, the Court of Appeal found that having so directed itself, the AIT then proceeded to misapply it: [34]-[41]. The Supreme Court finds that the AIT did not misapply the direction. The AIT did not dismiss the appeal because MA's account was incredible. It is possible to interpret the AIT's judgment consistently with the correct self-direction: [42], [46]-[48]. The Supreme Court also finds that the AIT had not overlooked the fact that MA had spent the last 12 years in prison and administrative detention in the UK. There is no explicit reference to his imprisonment, however, it is clear from the AIT's judgment that they were well aware of it: [49]. The AIT's conclusion that MA did not satisfy them that he did not have the necessary protective links in Mogadishu was one which was open to them to make: [50].

The Court also makes some general observations about the proper role of the Court of Appeal in relation to appeals from specialist tribunals on grounds of error of law. The appellate court should not characterise as an error of law what is, in reality, no more than a disagreement with the AIT's assessment of the facts. Furthermore, where a relevant point is not expressly mentioned in the judgment of the AIT, the court should be slow to infer that it has not been considered and taken into account: [43]-[45].

Whilst expressing no view on the issue, the Court also comments on the question of standard of proof, in particular the correct test to apply to past and present facts: [12]-[20]. The Court indicates the desirability for the point to be decided authoritatively in another case: [20].

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at:**

**[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)**