



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01197/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 22nd September 2013

Determination sent
On 26th September 2013
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Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

KHADIJA ALI ABDULLAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by J R Rahman, Solicitors
For the Respondent: Mrs M O'Brien, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant claims to be a member of the Bajuni group and a national of Somalia, born 26th May 1960. She failed to establish her claim in proceedings in 2000 – 2004. Further representations were made on 21 December 2012. The Respondent rejected them for reasons explained in a letter dated 24 January 2013, and issued removal directions.

2. First-tier Tribunal Judge Handley dismissed the Appellant's appeal against the Respondent's decision by determination promulgated on 28th May 2013. He found that the Appellant is not Bajuni, but was unable to make a finding as to her nationality (paragraph 27).
3. The Grounds of Appeal to the Upper Tribunal were not prepared by Mr Winter and he did not adopt them in his submissions. They are framed in extravagant language, describing the judge's reasoning as "perverse and extremely irrational", but they are no more than disagreement with factual conclusions which the judge was entitled to reach, and for which his reasons are more than adequately explained.
4. Permission was granted because "... even if the Appellant was not a Somali, the judge arguably erred in failing to consider her position as a sole woman on return to Somalia". (There is nothing in the Grounds about this.)
5. The Respondent submitted a Rule 24 reply, which is rather confused. It argues that a judge is not required to consider a case in the alternative when the Appellant's account is not accepted, and that a claimant who tells lies on a central issue cannot generally have her case saved by general evidence. That is beside the point.
6. Mr Winter observed that the removal directions dated 24th and served on the Appellant on 28th January 2013 specify removal to Somalia. He accepted that the Respondent's refusal letter declines to accept that the Appellant is from Somalia. He submitted that in those circumstances the judge should have determined the appeal as if the Appellant were to be returned to Somalia, which might give rise to a risk. He had to hand authorities on general risk to a sole woman returning to Somalia. He did not propose to refer to any authority on the correct legal outcome where an Appellant is found not to have established that she is a national of the country she claims.
7. I advised that in my view the error specified as arguable in the grant of permission is misconceived.
8. On a finding that an Appellant is not from the country claimed, the Respondent will not remove the person there. A country of falsely claimed origin is not a possible destination of actual removal.
9. The specification of the claimed country of origin in removal directions is often in line with an Appellant's claim, and with what she may try to establish on appeal. This makes sense where the claimed country of origin is not accepted, but the Respondent is not in a position to put forward another legally available destination. It is (or used to be) common to find in decision letters a statement that the destination was specified only as the focus of any appeal.

10. The absence of such a paragraph in the present letter is irrelevant. The Appellant has had the chance to put forward (again) her case that she is a refugee from Somalia. She may be in limbo of her own making (not stateless, but of unknown nationality), but the resolution is not to find her a refuge in respect of a country with which she is not connected.
11. It appears that some judges have allowed such appeals on the basis that to return an Appellant to a country where she is not a national might give rise to a risk either under the Refugee Convention (or under Article 3). That proceeds on a wrong assumption. Mrs O'Brien advised that it was her understanding that when appeals are so allowed, the Respondent does not seek to appeal further, but advises the Appellant that no grant of refugee status will be made, and that a further decision may follow (presumably involving removal to any available country of removal which can be ascertained).
12. My decision appears generally in line with the textbook discussion – *Macdonald's Immigration Law and Practice*, 8th ed.:

[16.65]

The country of destination specified in **removal directions** has been the subject of extensive scrutiny by the courts. **Removal directions** which fail to specify a country of destination at all are invalid and do not give rise to a right of appeal.¹ This does not apply where a part of a country or a city is named so as to leave no doubt as to the country to which removal is intended.² The naming of the wrong country in the **removal directions** has been held not to affect an asylum appeal, but to require reconsideration and amendment of the directions.³ A starred Tribunal in *Zaqaj v Secretary of State for the Home Department* laid down detailed guidance on the proper approach to dealing with cases of this type, indicating that any apparent defects as to destination in the **removal directions** should be raised at the preliminary hearing stage in appeal proceedings.⁴ They indicated that where the error had prejudiced the appellant, the directions should be withdrawn and fresh directions served, giving rise to a fresh appeal, but where the appellant was not so prejudiced, irregularities should be waived.

¹ *Makambo* [2002] UKIAT 06619, 19 February 2003 (a legal tribunal headed by Deputy President Ockleton). The earlier decision of *No 19* (01/TH/0093), in which a Tribunal of Collins P, Ockleton DP and Moulden VP held a notice valid for appeal purposes even though no destination was specified, cannot in our view stand.

² *Sula and Demaj* (01/TH/00504), where **removal directions** for 'Kosovo' and 'Pristina' were held sufficiently unambiguous as to the country of destination to be valid.

³ *Ertan* (19510) 5 July 1999. See also *Wolde v Secretary of State for the Home Department* [2002] UKIAT 01068 (10 April 2002, unreported).

⁴ *Zaqaj* [2002] UKIAT 00232 (4 February 2002, unreported) (starred). Although the Court of Appeal reversed the Tribunal's decision, see *Zaqaj v Secretary of State for the Home Department* [2002] EWCA Civ 1919, [2003] Imm AR 298, [2003] INLR 109, the point on appeal was the scope of an appeal under the IAA 1999, s 66 and does not affect this guidance.

[16.64]

The situation is more complex where nationality is disputed. In cases where the Secretary of State does not accept the claimed nationality of an asylum seeker, the issue of which country to specify in **removal directions** has caused many problems for the appellate authorities dealing with an asylum appeal.¹ The Secretary of State's current practice is to specify removal to the applicant's claimed country of nationality, for appeal purposes, a practice which received the endorsement of a starred Tribunal in *MY (Somalia)*,² and the Tribunal and the High Court have made it clear that an applicant who claims to be of a specified nationality for the purposes of an asylum claim cannot be heard to deny that nationality when it comes to **removal directions**.³ It is not the function of the appellate authority to ascertain an alternative nationality.⁴ However, where the Secretary of State asserts that the applicant has more than one nationality, and issues directions specifying one destination country, so that the issues on an asylum appeal are limited to that country, she cannot subsequently switch and issue directions to the second country without allowing the applicant a further appeal.⁵

¹ See eg *Abubakar* (01TH02477) (6 December 2001, unreported), where an adjudicator upheld the Secretary of State's decision that the asylum seeker was not Somali and then held that the **removal directions** specifying Somalia were invalid and that there was no valid appeal. The Tribunal allowed the Secretary of State's appeal but remitted the case to the Secretary of State to reconsider nationality and to issue directions accordingly.

² [\[2004\] UKIAT 00174](#), in which the President (Ouseley J) said that it was difficult to see how an applicant could challenge the rejection of nationality and its consequences without any removal being proposed.

³ *Khan (Asif)* [2002] UKIAT 04412 (where the claimant's contention that he was from Afghanistan was rejected, and before the Tribunal he sought to challenge the **removal directions** specifying Afghanistan on the ground that the adjudicator had found he was not of that nationality); *Hamza* [2002] UKIAT 05185; *R (on the application of Tu) v Secretary of State for the Home Department* [2002] EWHC 2678 Admin, [2003] Imm AR 288, a similar scenario involving a disputed Indonesian nationality, where the Administrative Court exercised its inherent jurisdiction to refuse relief.

⁴ *Khan (Asif)* above. The Secretary of State accepts that, where the adjudicator upholds his decision on an appellant's nationality, he must undertake further investigations to seek to ascertain the true nationality to effect lawful removal (unless removal can be effected to another lawful destination under [Immigration Act 1971, Sch 2, para 8\(1\)\(c\)](#) such as the country of embarkation). The court in *Tu* (fn 3 above) left open the possibility that a challenge to the legality of **removal directions** may be feasible on the grounds that risk on return had not been assessed in relation to the new destination. However in *MY (Somalia)* (fn 2 above) the Tribunal made it clear that an applicant who had lied about his or her nationality would not be able to put forward a fresh, inconsistent story in response to **removal directions** to a different country.

⁵ *Wolde v Secretary of State for the Home Department* [2002] UKIAT 01068.

13. At best the Appellant's appeal might have been allowed to the extent that the removal directions were not in accordance with the law, being made to a country to which she is not removable. But any such submission would have been inconsistent with her substantive case; no such submission was made; and such an outcome would make no practical difference to her position.
14. The Appellant was not entitled to any outcome other than to have her appeal dismissed. The determination of the First-tier Tribunal shall stand.
15. No order for anonymity has been requested or made.

A handwritten signature in black ink, reading "Hugh Maclean". The signature is written in a cursive style with a large, stylized initial 'H'.

23 September 2013
Judge of the Upper Tribunal