



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11703/2011

THE IMMIGRATION ACTS

Heard at Bradford
On 8th May 2012 and 6th September 2013

Determination Promulgated
On 9th October 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

AISHA MOHAMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Worthington of Cole & Yousaf Solicitors (8th May 2012)
Miss S Khan (6th September 2013)

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer (8th May 2012 and
6th September 2013)

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Immigration Judge Sarsfield made following a hearing at Bradford on 21st November 2011.

Background

2. The Appellant claims to be a citizen of Somalia born on 6th January 1994. The Respondent believes her to be a citizen of Tanzania born on 12th July 1987. She applied for asylum on 22nd March 2011 having been in the UK since March 2009. Her claim was based upon her ethnicity as a Somali Bajuni clan.
3. The Appellant was interviewed in Swahili and does not speak Somali. When she claimed asylum her fingerprints were matched against a visa application made in Nairobi in March 2009. The visa was applied for using a Tanzanian passport issued on 27th August 2008 in the name of Fatuma Mohamed Salun born on 12th July 1987. The Secretary of State believed that the Appellant was a Tanzanian citizen and the claim was refused on that basis. Additionally she noted that there were a number of discrepancies in the Appellant's dates and that her knowledge of Somali and her home island of Chovai was not commensurate with her having lived there.
4. At the hearing before the Immigration Judge the Appellant gave evidence and relied on a report from an expert witness Brian Allen. His expertise has not been challenged by the Respondent and indeed it has been relied upon in a number of other cases before the Upper Tribunal. Following a three hour interview, he stated, in a very detailed report, that he was completely convinced that the Appellant was indeed a Bajuni from Chovai as she claimed.
5. The Immigration Judge did not believe that the Appellant had given credible evidence. He relied upon an age assessment report which showed that she was not a child as she claimed but over the age of 18, did not accept that the Tanzanian passport was false and that both the Tanzanian and the UK authorities would have been deceived, and he outlined a number of discrepancies in her evidence. With respect to the report, he said that the Appellant could have learnt some of the information which she gave to Mr Allen and concluded that the details which she gave were not comprehensive. He dismissed the appeal.

Grounds for Permission to Appeal

6. The Appellant sought permission to appeal on the grounds that Mr Allen had said in his report that he had lived in Kenya for eleven years and in Tanzania for ten and was very familiar with the Swahili accent in both countries, and yet, despite looking for signs of the Appellant coming from a different Swahili speaking country, he said that he could find none. Mr Allen said that she had clear Bajuni features and spoke with a strong Bajuni accent. Furthermore she gave her evidence in her screening interview and before the Immigration Judge in Kibajuni and often used Kibajuni words when speaking to the expert.
7. Permission to appeal was granted by Designated Immigration Judge Shaerf. He said that the reasons which the Immigration Judge had given for his findings on the Appellant's account and expert's report were brief and not focused on the substantive issues in the appeal. The Judge did not consider the possibility that her

account might not be credible but given the expert's analysis and knowledge of Kibajuni her ethnicity might still be as claimed.

Submissions

8. Mr Worthington relied on his grounds. He submitted that the Immigration Judge had to consider the report in the round together with all of the other evidence and was obliged to give proper reasons for departing from the expert's view. Mr Allen had commented on matters, for example the Appellant's Bajuni features and accent, which could not have been learned by her in the gap between her asylum interview and her interview with Mr Allen.
9. Mrs Pettersen submitted that the determination was sustainable and that the Immigration Judge was entitled to rely upon the fact that the Appellant had made a visa application on the basis of a Tanzanian passport, which was strong evidence of her nationality. She observed that Mr Allen had not dealt with the question of whether the Appellant was a Tanzanian national, appearing to believe that it was the Respondent's case that she was from Kenya which diminished the weight which could be attached to his report.

Consideration of whether there is a Material Error of Law

10. The Immigration Judge was entitled to agree with the Respondent that the Appellant was a national of Tanzania on the basis that she had produced a Tanzanian passport, had lied about her age, had given vague evidence about her claimed home area and had not claimed asylum for two years after entering the UK. The problem with the determination is that the Appellant had adduced very strong evidence from an unchallenged expert that her ethnicity was as claimed. The Immigration Judge was obliged to deal with that evidence and to give detailed reasons for finding that it could not be relied upon.
11. It is entirely possible that the Appellant is a Bajuni from Somalia as claimed and yet has not given credible evidence about the circumstances of her departure. The Immigration Judge concentrated his mind upon discrepancies in the Appellant's various accounts, and those findings may well be open to him. However, that is not a safe basis for discounting the expert's clear and reasoned conclusions on tribal identity and nationality. It is no answer to the expert's view that the Appellant speaks Swahili with a Bajuni accent and that she has Bajuni features to say that there were discrepancies in her account in relation to her home island or her evidence of when and where and for how long she was in contact with the agent was discrepant.
12. Furthermore this is an Appellant who claims effectively to have been trafficked and sexually abused. The Immigration Judge makes no findings on this aspect of her claim, simply stating that even if she was under the control of another she had had every opportunity to alert the UK authorities about her situation.
13. The decision of the Immigration Judge is set aside.

14. The directions given for this hearing were for an error of law hearing only. No interpreter was booked. Furthermore, Mr Worthington said that Mr Allen was ready and willing to give oral evidence to the Tribunal and clearly it would be most helpful to hear from him. It was agreed that he should be asked to provide a supplementary report dealing with the question of whether the Appellant was likely to be a Tanzanian Bajuni as opposed to a Kenyan Bajuni.

The Resumed Hearing

15. After an inordinate and unexplained delay the matter came before me on 6th September 2013. On that occasion I heard oral evidence from the Appellant and from the expert Brian Allen. He has provided two reports, one dated 14th November 2011 and the second 18th May 2012. I have also been provided with two statements from the Appellant dated 11th November 2011 and 18th April 2012 respectively which she adopted to stand as her evidence-in-chief. The Respondent produced her bundle of documents, including the interview record and refusal letters, together with an additional short bundle relating to the issue of the Appellant's passport.
16. It was agreed between the parties that the issue of whether the Appellant was a Kibajuni from Somalia was determinative of this appeal. It is the Respondent's case that she is from Tanzania and removable to Tanzania. It is the Appellant's case that her Tanzanian documents are forgeries. Her oral evidence was given in Kibajuni.
17. The Appellant says that her father arranged for her to leave Somalia because of the danger to her there from the Hawiye clan. In 2009 he arranged for an agent called Ali Juma to take her away. Under cross-examination she said that she left her island of Chovai when she was 14 years old. Her father was a fisherman and paid the agent from his earnings. She travelled with him on a boat to Mombasa where they stayed for two days and from there they went to another place where they stayed for about two months. She was taken to a building where they spoke Swahili and where her fingerprints and photograph were taken. She was then returned to Kenya before flying to the UK in 2009. She says that she was given a red passport to travel with but she knows nothing about it.

The Expert Evidence

18. Dr Allen lived in Tanzania for ten years and lived and worked in East Africa for over twenty years. Since 2002 he has become an expert witness on the Bajuni of Somalia. He has conducted over 350 nationality testing interviews involving extended interviews with Somali Bajuni asylum seekers and writing reports which are used in court to prove nationality. He is a speaker of Kiswahili and Kibajuni and familiar with the customs and dialects of the region although he himself is not a trained linguist. He said that he had refused work when he believed that a person was not from Somalia as claimed, probably around 15% between 2002 and to 2005 and less since then because he operated a filter system.
19. Dr Allen says, in his report, that there is strong evidence that the Appellant is of Somali nationality and by the end of his three hour interview with her he was

completely convinced that the Appellant was a Bajuni from Chovai as claimed. He had a lengthy interview with her, some three hours, which was conducted in Swahili but she often used Kibajuni words. There was strong evidence of her Bajuni tribal identity. Her descriptions of customs were very much in line with traditional Bajuni customs, she was familiar with Kibajuni, and spoke with a strong Bajuni accent and she knew of the mixed origins of the Bajuni. She has Kibajuni features, namely an oval face and lighter skin colour.

20. Like other Bajuni girls from the island, he said that the Appellant had no education, apart from Koranic teaching. There was no reason to think that she had had any different standard of education from many other people he had met on her island. She was not familiar with English and spoke in simple sentences, mixing Swahili and Bajuni words together. She was not able to construct complex sentences and did not demonstrate abstract thoughts. The communication was basic. Young Bajuni girls were disempowered, being kept at home and doing what their parents said. She would have been given no explanation of what was happening to her by either her parents or the agent and would have had no understanding of what was happening to her.
21. Dr Allen was critical of the Home Office interview. She would have been frightened which would have affected her ability to recall. He said that the Appellant could only demonstrate limited knowledge in response to what questions were asked. For example, asking her about regions would be meaningless to her. On the other hand she would have been able to name a couple of the Bajuni islands, which she did, and the currency. She could be expected to name some of the foods, and the ones which she named at interview were typical of food cooked on the Bajuni islands. He said that he was struck by the immediacy of her replies and the way that she linked pictures to her answers when he interviewed her. She told him the names of some of the foods which her mother cooked, giving them Kibajuni names, in line with Somali Bajuni usage, rather than Kenyan Bajuni. Kenyans and Tanzanians do not use them, which was very indicative of her origin.
22. The Appellant was able to name the different Bajuni clans during his interview with her. She told him that her father went to Kismayo to sell the fish which was in line with fishing practice on the island. There was a large fish market in Kismayo and many fishermen go there if they cannot sell in Chovai. She displayed a detailed knowledge of Chovai which a Tanzanian Bajuni would not have.
23. Dr Allen said that when he was living in Tanzania he did not meet any Somali Bajuni because there were very few in Tanzania, although there would be a small number in transit. He left Tanzania in 2000 and by then the Kibajuni had started to flee Somalia, but he did not have any contact with them although he had met some since they arrived in the UK. There were no Somali camps in Tanzania and no records of how many there were. If any were born in Tanzania they would be entitled to citizenship.

24. He said that if the Appellant was from Tanzania and had some education she would know some English. There was nothing about her accent that would place her in Tanzania and no indication that she came from either Tanzania or Kenya.
25. Mrs Pettersen put to Dr Allen that at her interview the Appellant's answers did not sit well with the knowledge she displayed when he interviewed her some six months later. Dr Allen agreed and said that there could be a number of factors. One could have been fear, or a difficulty with the interpreter, or trauma from the journey, all of which would affect her recall.

The Respondent's Case

26. It is the Respondent's case that the passport which the Appellant used to come to the UK is genuine and belongs to her. It was issued in Zanzibar on 27th August 2008. The Appellant did not leave Somalia, according to her chronology, until 2009. If she was in Zanzibar in 2008 this undermined the entire basis of her claim, and the Appellant could not have got the passport without making a personal application.
27. Mrs Pettersen said that the date of application was 23rd March 2009 and the Appellant was issued with a student visa. It seems that it was an online application and the Appellant was not interviewed although she would have had to supply documentation. She said that the new Tanzanian passport, which this is, contains the holder's fingerprints, signature and photograph which are digitally required. All of the details would have had to have been put into the passport when it was issued which was in 2008. However according to the Appellant she had no contact with the agent until 2009.
28. She accepted that the Appellant displayed a certain amount of knowledge about the Bajuni when she was interviewed by Dr Allen but there was a gap between the interviews and she could have learnt and acquired knowledge.
29. Miss Khan submitted that the burden lies with the Respondent to show that the Appellant is from Tanzania since that is what she is asserting. She could have approached the Tanzanian authorities or provided evidence that the Entry Clearance Officer had checked the passport and could have produced a report to show that the passport was a genuine one.
30. It is the Appellant's case that this is not her passport, that the signature belongs to someone else and that agents would have the mechanisms for obtaining false passports because this is what they did. It is likely that the passport would have been said to have been issued in 2008 because it would be more credible for a visa application in 2009 if it had not just been issued.
31. So far as the fingerprints were concerned she said that the Appellant accepted that she had given her fingerprints for the visa application but did not say that they had been taken twice. She relied on Dr Allen's evidence that the Appellant would not have been capable of obtaining a visa as a student because she simply did not have the educational background to do so.

32. She submitted that the Appellant was able to give some answers at the interview in relation to her claimed background, but a number of the questions were inappropriate, for example asking her about regions which would be meaningless to her. Furthermore she was only either 17 or just 18 years old at the time of the interview and it is likely that she would have found the situation intimidating.

Findings and Conclusions

33. I cannot see any support in the documents for Mrs Pettersen's submission that the Appellant would have had to have applied for her passport in person in Tanzania. The excerpt from Wikipedia, upon which Mrs Pettersen relied, does not in fact say that a personal application is required. I accept that it is likely that East African agents are perfectly capable of obtaining a false passport if given the money to do so. The Appellant's fingerprints were matched against a visa application made in Nairobi on 31st March 2009 and she accepts that fingerprints were taken for the visa.
34. I have no reason to doubt Dr Allen's expertise nor his bona fides. He interviewed the Appellant for three hours and is clearly absolutely convinced that she is a Somali Bajuni. Whilst it is always possible that the Appellant may simply have prepared well for her interview with Dr Allen I find that it is not reasonably likely. In any event, he comments on her typical Bajuni features. I accept that the Appellant was very young and would have been intimidated by the interview situation which could have inhibited her ability to give accurate answers. The Appellant's knowledge of Chovai was limited at interview but there is a reasonable explanation.
35. There is no reason at all not to rely on his opinion in the absence of convincing evidence from the Respondent that the Appellant would have had to present in person in Zanzibar in 2008 in order to have obtained the passport.
36. I also accept, from Dr Allen, that it is highly unlikely that the Appellant would have been able to obtain a student visa because her level of education is far removed from that displayed in the online application form. In that application form she says that she was educated in English at advanced secondary level. There is no indication at all that this Appellant has any English language ability.
37. Dr Allen does not hold himself out to be a linguistic expert but he has lived in East Africa for twenty years and speaks some Kibajuni. The Appellant gave her evidence in Kibajuni. It was clear that she understood the interpreter. I find that she speaks and understands the language which is some evidence of her origins.
38. In the reasons for refusal letter the author says that during her screening interview the Appellant was only asked simple questions which could not be considered evidence that she was fluent in Bajuni. However the fact that she gave oral evidence in Kibajuni without any difficulties with the interpreter establishes her fluency in the language.
39. I conclude that the Appellant is not entitled to the Tanzanian passport upon which she travelled to the UK and is not removable there.

Decision

40. The decision of the Immigration Judge has been set aside. It is remade as follows. The Appellant's appeal is allowed on asylum grounds. Miss Khan said that no separate human rights arguments would be made.

Signed

Date

Upper Tribunal Judge Taylor