



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

Appeal Number: AA/08373/2013

THE IMMIGRATION ACTS

Heard at Laganside Courts, Belfast

Determination

On 30 October 2014

Promulgated

On 7 November 2014

Before

The President, The Hon. Mr Justice McCloskey

Between

HAMDY MAHAMED

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mr McTaggart (of Counsel), instructed by Andrew Russell and Company Solicitors

Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal originates in a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), the Respondent herein, dated 02 September 2013, whereby the claim of the Appellant, a national of Somalia aged 29 years, for asylum, was refused. The Appellant's claim under Article 8 ECHR was also refused. The ensuing appeal to the First-tier Tribunal (the "*FtT*") was dismissed. Permission to appeal to this Tribunal was granted mainly on the ground that the basis upon which the Judge had decided to dismiss the asylum appeal was unclear. Specifically, one could not determine with clarity from the determination whether the Judge had given effect to the country guidance

decision in AMM [2011] UKUT 00445 (IAC) or, alternatively, had departed from this decision, preferring to adopt a different approach based on relevant persuasive evidence.

2. Upon the hearing of the appeal, it was conceded on behalf of the Secretary of State that the decision of the FtT is unsustainable in law. Mr Mills, in making this concession, acknowledged what he described as “a *complete lack of reasoning*” in the FtT’s decision. This relates particularly to the key passages in [15] and [16] thereof. I agree that the decision of the FtT suffers from a clear indication of the legal touchstone adopted by the Judge in dismissing the appeal. An additional feature of the decision of some concern is the Judge’s espousal of earlier findings – unspecified and unparticularised – of a differently constituted FtT in the dismissal of the Appellant’s appeal against the refusal of her first claim for asylum.

DECISION AND DIRECTIONS

3. I decide and direct as follows:
- (a) The decision of the FtT is set aside.
 - (b) The case is remitted to a differently constituted FtT for the purpose of rehearing and remaking the decision.
 - (c) A composite appeal bundle, with index and pagination, to include a comprehensive witness statement of the Appellant, will be filed and served by the Appellant’s solicitors by 31 January 2015 at latest.
 - (d) The case will be relisted for hearing in the FtT on the first available date thereafter.

The current, operative country guidance decision of the Upper Tribunal is now, of course, MOJ and Others [2014] UKUT 442 [IAC].

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 30 October 2014