



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

Appeal Number: AA/09063/2012

**THE IMMIGRATION ACTS**

**Heard at : Laganside Courts  
On : 20<sup>th</sup> August 2013**

**Determination Promulgated  
On : 22<sup>nd</sup> January 2014**

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**Before**

**Upper Tribunal Judge McKee**

**Between**

**NABEL SHARIF MOHAMED**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Stuart McTaggart, instructed by R.P. Crawford & Co. Solicitors  
For the Respondent: Mrs Margaret O'Brien of the Specialist Appeals Team

**DETERMINATION AND REASONS**

1. In February 2012 Mr Mohamed applied for asylum, having travelled from Somalia to Belfast, he said, the previous month. The application was refused on 20<sup>th</sup> September 2012, and on the same date a decision was taken to remove Mr Mohamed, who was informed in the Notice of Decision that if he did not leave the United Kingdom

voluntarily, directions would be given for his removal to Somalia. An appeal against that decision came before the First-tier Tribunal on 7<sup>th</sup> March 2013, and was dismissed by Judge Fox. Leave was then sought to appeal to the Upper Tribunal, and this was granted by Designated Judge McCarthy. When the matter came before me today, it was agreed on all hands that there were material errors of law in the First-tier determination, requiring it to be set aside. I shall briefly set out those errors below.

2. Judge Fox's principal finding is that the appellant is not a national of Somalia at all. But no other nationality is suggested, although at paragraph 34 of his determination Judge Fox finds that "*if the Appellant is now returned to his country of nationality, there is not a real risk that he will suffer a breach of his protected rights under Article 3.*" If the judge is referring to Somalia, that contradicts his finding that the appellant is not a national of Somalia. At the same time, the judge believes that the appellant will enjoy the protection of "*powerful forces*" on his return to Mogadishu, all the more so because, not being a Somali national, he will not be identified with any particular clan.
3. This is all completely illogical. If one is not a Somali national, and has no connexion with any of the Somali clans, it is hard to see how one would enjoy extra protection in Somalia. The proposition that it is safer to go to Somalia if one is not a citizen of that country than if one is, may not be expected to trigger an influx of tourists to that country. The practicalities of involuntary removal to Somalia for a non-national are, it is true, for the respondent rather than the judge, as the appeal is against removal in principle, rather than the removal directions which might be set once appeal rights are exhausted. But an airline would no doubt be unwilling to carry the appellant without a passport or travel document.
4. Judge Fox was certainly justified in finding it odd that the appellant could speak so little Somali ~ not even the word for 'mother' or the numbers one to ten ~ when both his parents were Somali and spoke to each other in Somali at home. In this country, it is generally the case that the children of first-generation migrants will be fluent both in the mother tongue of their parents, which is spoken at home, and in English, which is spoken outside the home. But it is not unknown for the children of migrants to speak only English, for example if they are being brought up by a single parent who chooses to speak English at home, or if each parent has a different native language and they prefer to communicate with each other in English. At all events, it does not necessarily follow that inability to speak the majority language of a country means that one is not a citizen of that country. There are many British citizens with little or no English.
5. The safety which Judge Fox believes the appellant will enjoy in Mogadishu stems from his inference that his mother "*is one of the protected and fortunate few who can reside happily in Mogadishu.*" She is said to have stayed on in Mogadishu after taking the appellant there, and to have purchased her own property, which suggests that she is a woman of substance. But there is no evidential basis for this. At Q.132-133 and Q.144 of the asylum interview, the appellant said that his mother had gone to live in Mogadishu with her uncle's relative, but he did not know the area, as he had only stayed there for one day, and he did not know where she was now. In his later witness statement, the appellant said that his mother had moved to Ethiopia. So the premise on which Judge Fox bases the safety of return to Mogadishu falls away.

6. There are other passages in the determination where the reasoning is very obscure. At paragraph 13, Judge Fox says that he does not propose to deal individually with the points raised against the appellant in the Refusal Letter, but instead has looked at the matter in the round, which is "*the first and most comprehensive way of reviewing the issue of credibility.*" This seems to misunderstand the task of the First-tier Tribunal, which is not to 'review' the respondent's credibility findings, but to make its own findings. At paragraph 19, Judge Fox bizarrely considers "*the opposing view*" that the appellant's lack of knowledge of the Somali language is genuine. That implies that the appellant's ignorance of the Somali tongue is a pretence, and that he can speak it perfectly well. But why should he pretend not to? "*It could be*", suggests Judge Fox, "*that this is just part of his story to gain access to the United Kingdom.*" Why someone who is not a Somali but who speaks fluent Somali should pretend not to speak Somali in order to be recognised as a refugee from Somalia is not immediately obvious.
7. This is not a case where there has been an error of law but the findings of fact by the First-tier Tribunal can stand. There are certainly problems with credibility, which are pointed out in the Reasons for Refusal Letter. As the parties agree, the appeal will have to be heard *de novo*, and in accordance with Practice Statement 7.2(b) that should be on remittal to a different judge of the First-tier Tribunal.

## **DECISION**

The appeal is allowed to the extent that the first-instance determination is set aside and the case is remitted to the First-tier Tribunal for a fresh hearing.

Richard McKee  
Judge of the Upper Tribunal