



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

Appeal Number: AA/04542/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Centre
On 3 March 2015**

**Determination
Promulgated
On 11 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

DUNIYA ISSE MOHAMOUD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Fountains Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 9 January 2015 I found that the determination of First-tier Tribunal Judge P J Holmes that was promulgated on 6 October 2014 contained an error on a point of law in relation to the grounds of appeal relating to asylum and that it had to be set aside for that decision to be remade. At the hearing both representatives confirmed they had copies of my earlier decision.

2. For the sake of clarity, I mention that Judge Holmes allowed the appeal on humanitarian protection grounds and that decision is unchallenged. However, before the SSHD can make a grant of leave, the issue of whether the appellant is a refugee or a person otherwise in need of international protection has to be resolved. To that extent, the outcome of the appeal will result in the appellant being granted leave of some kind.
3. As indicated in my earlier decision, the only issue arising in this appeal is whether the appellant has a well founded fear of persecution in Somalia because she would return as a lone woman. As I indicated, the other grounds of appeal fall away because they were resolved satisfactorily by Judge Holmes. In this context, the appellant gave further evidence at the hearing and both Mr Mills and Mr Howard made submissions. There is no need to rehearse the evidence or submissions as their content will be apparent from what I say below.
4. I begin my reasons by setting out the findings made by Judge Holmes that in effect led to this appeal. These are contained in paragraph 33 of his determination.

33. I consider that I ought to follow the guidance given by the Tribunal in AMM. The fact that the appellant has not been believed in her claim to be from a minority clan does not lead to the conclusion that upon return to Mogadishu she would be able to secure for herself the protection from harm which (according to AMM) are available only to a limited class who have appropriate connections. She might or might not be able to re-establish contact with her husband, but his current circumstances are unknown. The respondent's suggestion that she could obtain protection from her clan (whichever it might genuinely be) is mere speculation. The appellant would be, upon the evidence available to me, a lone woman returnee without any connections to powerful actors or any claim to middle class or professional status.

5. Mr Mills sought to limit the impact of these findings to the country situation described by the Upper Tribunal in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC). He submitted that in light of MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) the situation was no longer the same and therefore all the findings have to be revisited because, of course, when remaking the decision the situation at the date of the resumed hearing becomes the relevant date.
6. Mr Mills suggested that as Judge Holmes had found the appellant was not a member of a minority clan, she must be a member of a majority clan and therefore would have the assistance needed to live in Mogadishu or elsewhere in Somalia even as a lone woman. He reminded me of the findings in MOJ that the clan structure had changed in Mogadishu and the booming economy there meant that most returnees could avoid destitution.
7. I mention at this juncture two concessions made by Mr Mills. First, lone women continued to form a particular social group in Somali and the issue for me to decide is whether being a member of such a group would cause the appellant to have a well-founded fear of persecution. The second is

that it was accepted that the appellant could not obtain support from her husband. Mr Mills did not challenge the appellant's oral evidence that she had separated from her husband sometime between 2005 and 2007, when she found out he had taken a new wife in Kenya, where he was living at that time and that he and his new wife had children.

8. I reject Mr Mills's arguments in their entirety, primarily because of the strength of the submissions made by Mr Howard. Mr Howard reminded me of the key points decided by MOJ regarding the need to assess all of an appellant's circumstances to see whether a person without any relatives in Mogadishu could re-establish herself on return. Mr Howard argued, in essence, that there were good reasons for finding that the appellant would not be able to access the economic opportunities that exist in Mogadishu because of the following factors
 - a. The appellant has been absent from Mogadishu since at least February 2002, when she entered the UK. When she arrived in the UK she was 18 years old. These facts are established from her immigration history which is not disputed. The length of time since the appellant left Somalia is sufficient reason to conclude that she would not be able to secure financial support on return from those who helped her fund her journey to the UK.
 - b. The appellant has no family or clan associations in Mogadishu. This is a finding made by Judge Holmes and is not challenged.
 - c. The appellant has no access to financial resources. She has never worked in the UK and is unlikely to find employment in Mogadishu because she has no skills that would enable her to benefit from the economic boom. She is currently studying for a health and social care qualification which she hopes will enable her to find employment in the UK but she does not have that qualification yet and there is no evidence that such employment would be available in Mogadishu.
 - d. The appellant has relied on the good will of friends whom she refers to as her brother and sister. They have limited income and have in effect only provided accommodation. The appellant has relied on various benefits whilst in the UK to meet her living costs. These facts are established by the findings Judge Holmes made elsewhere in his determination.
 - e. It follows that the appellant would be unable to rely on remittances from these friends. She has no connections to anyone else who might be expected to send her money.
9. In making his arguments, Mr Howard referred me to paragraphs 344 to 352 of MOJ and highlighted in particular the evidence that was before the Upper Tribunal from Dr Mullen. At paragraph 353 the Upper Tribunal recorded that returnees were likely to have advantages over Somali citizens because of being better educated and being regarded as more resourceful. Neither factor applies to the appellant, given her history before and since arriving in the UK.

10. In addition, Mr Howard reminded me of the guidance provided by the Tribunal in NM & Ors (Lone women – Ashraf) Somalia CG [2005] UKIAT 00076. Despite its age, it was upheld in both AMM and MOJ. At paragraph 99 of NM the Tribunal had identified that the age of a woman could be a relevant factor when assessing risk on return. Although the appellant is 31, she has been dependent on friends since arriving in the UK and has never lived alone. Having to live alone would put her at risk on return. At paragraph 119 the Tribunal found that lone women were in general likely to face greater risks on return than men but on its own such discrimination would not amount to a real risk of persecution.
11. Mr Howard took me to the UK Home Office *Country Information and Guidance – Somalia: Women fearing gender-based harm/violence* (February 2015). It confirms the risks to women in Somalia and the lack of effective protection. At section 1.2.8 the guidance confirms that being a woman is not enough of itself to establish a need for international protection but points out that a woman without family/friend/clan connections or who is without resources is likely to be at risk of sexual and gender based violence on return. At 1.2.17 the guidance indicates that for single women internal relocation will not be available in the absence of meaningful support networks or a real prospect of securing access to a livelihood.
12. Mr Howard relied on the factors discussed above to show that there were other factors at play and that when taken with the appellant's gender, she had established she had a well-founded fear of persecution on return.
13. I agree entirely with Mr Howard's submissions. He has correctly identified facts which are either established by the preserved findings of Judge Holmes or which are otherwise undisputed. The facts establish, bearing in mind that it is the lower standard of proof that applies, that the appellant would return as a lone woman with no family/friend/clan connections and who would have no access to resources or have any meaningful support networks or a realistic prospect of securing access to a livelihood. The Home Office's own very recent guidance confirms a person with this matrix of facts has a well-founded fear of persecution.
14. For these reasons, I find that the appellant is a refugee and remake Judge Holmes's decision accordingly. I add that because I find the appellant to be a refugee, she cannot be a person otherwise in need of international protection and therefore I must also remake that part of his decision. But this is merely for clarity as the two statuses are mutually exclusive.
15. Finally, I address the issue of anonymity. The First-tier Tribunal did not make a direction for anonymity and I find no reason to make one in the Upper Tribunal, bearing in mind there has no application for one to be made.

Decision

The determination of First-tier Tribunal P J Holmes contains an error on a point of law and is set aside. I remake the decision and find that the appellant is a refugee.

Signed

Date **11 March 2015**

Deputy Judge of the Upper Tribunal