Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA029642011

THE IMMIGRATION ACTS

Heard at Field House
On 11th May 2016

Decision & Reasons Promulgated
On 27th May 2016

Before

THE HONOURABLE MR JUSTICE COLLINS

Between

ZM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Jorro, Counsel instructed by Wilsons Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal has a somewhat lengthy history. The appellant's case is that she is from Somalia and that she claimed asylum or humanitarian protection on the basis that as a lone female she would be at risk of ill-treatment contrary to Article 3 were she to be removed to Somalia.

2. She originally claimed asylum in this country in March 2009. She then claimed that she was born on [ ] 1992 and so was a minor. I do not need for the purposes of this judgment to go into detail of the issues on her credibility. Suffice it to say that an age assessment carried out in a way which was said to be consistent with what the law requires, the **Merton**

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test, concluded that she was not indeed a minor. In fact I think what was said was that she was some five years or so older than she alleged. That has been upheld.

3. Furthermore she claimed that she was from a clan, Reer Hamar, and from Mogadishu. That was not accepted on the basis of linguistic reports which have been undertaken both against her through the organisation that the Home Office was then using, namely Sprakab, and an organisation which the appellant's solicitors went to known as De Taal. Both accept that she is not as she said from the clan that she alleges. Furthermore, her knowledge of Mogadishu was not sufficient to make it likely that she had come from Mogadishu. Sadly, what she has done is to put forward a case which is untruthful as to both her age and where she comes from in Somalia. It may well be that she believed that by asserting that she was a minor she would get an advantage as indeed she would in arriving in this country and were she to be able to show that she came from a particular clan and from Mogadishu, she would also be at a greater advantage in putting forward an asylum claim.

4. However the Secretary of State rejected her claim. In the report from SPRAKAB which was obtained on the basis of a 17 minute recording the authors (because there were two assessors) decided that not only was she not from the clan in question but that the Somali she spoke was southern Somali and it was put in this way, namely that there was a certainty that she was a south Somali speaker and a certainty that that meant she was from Kenya, not from Somalia. That conclusion was accepted by the Secretary of State, not surprisingly, and was also accepted first of all by the First-tier Judges who decided on her appeal: there were two because there were issues in relation to the first finding and there was a reconsideration by the second judge. Again it is not necessary for the purposes of this judgment to go into the various details suffice it to say that there was an appeal to this Tribunal and that was heard by Upper Tribunal Judge Craig.

5. Initially in 2012 he decided the discrete point relating to the appellant's age and he found against her on that. For reasons that will become clear in a moment that is no longer an issue but he also had to decide on the claim based upon the age that she in reality was and that decision was made in August 2013. What he decided was that there were clear reasons to reject her credibility in relation to the tribe and in relation to Mogadishu but he decided in terms that if she had to be removed to Somalia, that is to say if she was truly a national of Somalia, then she would be at real risk of breach of her Article 3 rights because it was not safe for a lone female such as her to be returned to Somalia, certainly to Mogadishu, and there was nowhere else within Somalia where as a lone female without support she could safely relocate. That is set out in paragraphs 40 and 41 of Judge Craig's decision.

6. He then went on to decide where indeed she came from and he considered the reports to which I have made reference and he decided

that he could properly give sufficient weight to the Sprakab Report and he decided that he was satisfied on the totality of the evidence that she was from Kenya. He relied heavily upon the decision in **<u>RB</u> (Somalia)** that is a decision in which the Tribunal had relied on Sprakab. That was taken to the Court of Appeal and the Court of Appeal stated that it was proper to give weight and if necessary to accept the report from Sprakab. The Secretary of State was entitled to do that and the Court of Appeal upheld that.

7. What was unknown to Judge Craig was that a different view had been taken in Scotland. There was a decision, albeit it was I think only a paper decision, of Lord Macphail. Not surprisingly that had not been reported and there was no suggestion that the Home Office Presenting Officer, Mr Jarvis who was involved in the appeal before Judge Craig was aware of that decision and it is I am afraid not in the least surprising that the information about it was not given to those who had to deal with appeals in this country. Since then there has been a formal decision of the Scottish Inner House which was **2013 CSIH 68**, in fact there were two appeals before the Scottish Court. Judge Eassie giving the judgment of the court considered an attack on the Sprakab Report in the relevant cases and he cites at length the views of Lord Macphail to which I have referred. It so happens that the two analysts concerned were subjected to the very strong criticism from Lord Macphail, the same two who have been involved in this appeal. Guidance has been issued in the form of guidelines produced in 2004 by an international group of linguists. As Lord Macphail said, and I adopt:

> "Although they are not authoritative or prescriptive they are in accordance with commonsense and are backed by a considerable number of signatories who have very strong academic standing and it is made clear that analysis must be done by qualified linguists who should provide specific evidence of their professional training and expertise but neither of the analysts who are described as EA20 and EA17 fell into that category."

8. Those as I say are the two analysts who are involved in this case. Neither has a degree in linguistics, neither has published in any peer-reviewed publication or been a member of professional association. Their expertise involves EA20 having been born in Mogadishu and having been a Somali interpreter since 1990 and an analyst at Sprakab since 2006 and having knowledge of some dialect and EA17 equally is said to have been born in Mogadishu and been an analyst since 2007. The fact that they are natives of Somalia does not overcome their lack of the necessary expertise.

9. Furthermore the assertion of certainty is one which simply, it is said, cannot stand. There has been a criticism in the De Taal Report obtained by the appellant's solicitors and that makes clear that in the view of the author it is quite impossible and clearly wrong for Sprakab to say that it is certain that she comes from Kenya. That she speaks southern Somali is common ground but those from southern Somalia will all speak southern Somali so that in itself cannot mean she comes from Kenya. Equally, the basis upon which the Sprakab analysts asserted that she was indeed from

Kenya depends upon the manner in which she spoke certain words. It is very important in a case such as this where there is a real issue that the speaking which is analysed is entirely acceptable. I put it that way because we are here concerned with a 17 minute interview or 17 minutes speaking on tape. The question whether that is indeed satisfactory has not been gone into.

10. I should add that the Supreme Court has since considered the Scottish case that went to the Supreme Court. The Supreme Court has said that the Home Office, indeed the Tribunal, is entitled to consider Sprakab Reports and can give weight to them depending of course upon the circumstances but **RB** went too far in the Court of Appeal in giving the imprimatur to those reports that it did. All will depend in any given case upon the circumstances of that case and the evidence that is before the Tribunal as to the reliability of the individual decision. I should add that I am aware that this Tribunal is due to hear a case in July in which there will be detailed consideration of the reliability of Sprakab in general. That is a case called **Rezq**, appeal number AA/10153/2012, a case which is to be decided by judges of this Tribunal in Glasgow on 7 July this year but it is not in my view necessary for this case to be put over awaiting that general decision because I am satisfied that for the reasons given by the De Taal Report and the analysis of Lord Macphail as applied by Lord Eassie that the Secretary of State cannot place reliance upon the Sprakab conclusions in relation to Kenya. It follows that I do not believe that Judge Craig was correct in deciding that the appellant came from Kenya. That was not a finding that was justified on the evidence before him. To be fair to him he was relying heavily upon the **RB** approach which has now been shown to be over favourable to the Sprakab Reports.

11. I should say in fairness to Mr Bramble that from the outset I think he recognised that he might be in some difficulty in seeking to uphold that part of Judge Craig's findings. What he believed he was able to rely on was the conclusion of Judge Craig that if despite her untruths she was a national of Somalia she would be entitled to humanitarian protection. That was based upon the then guideline case but that decision has been overtaken by a more recent country guidance **MOJ** and the conclusion that Judge Craig reached to which I have already referred was one which is not correct. The difficulty in that submission relies in the way in which this matter had been remitted by the Court of Appeal. Following Judge Craig's decision there was an application for leave to appeal to the Court of Appeal. The Court of Appeal accepted that leave should be granted. Judge Craig had refused leave and as a result of that there was a consent order, the consent order being that the appeal be allowed, that Judge Craig's decision be quashed and the matter be remitted to the Upper Tribunal for consideration of the grounds of appeal.

12. The grounds of appeal were of course grounds put forward by the appellant who was appealing against the dismissal of his appeal and it is important to see what were the statement of reasons put forward by the

Treasury Solicitor on behalf of the respondent as to why it was accepted that the matter should be reconsidered. In paragraph 4 this is said:

> "Following three hearings in the Upper Tribunal on 28 August 2013 Upper Tribunal Judge Craig made findings on the basis of the country guidance then in existence that she was from Kenya and would not be at risk on removal to Kenya. Had the Tribunal been satisfied that she was Somalian it would have concluded that she could not safely be removed to Mogadishu and nor is there anywhere else within Somalia to where, as a lone female, without support, she could safely relocate."

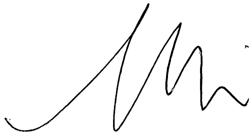
13. But in paragraphs 7 and 8 the Treasury Solicitor deals with the Sprakab issue, whether she was from Kenya or from Somalia. It makes the point that the matter now has to be considered in the light of the Scottish decisions and indeed the Supreme Court decision and accepted in those circumstances that the matter should be reconsidered in relation to that. Of course there was no cross-appeal by the Secretary of State in relation to the matters set out in paragraph 4 of the Statement of Reasons, namely that she could not be safely removed as a lone female to Somalia and it is to be noted that the Court of Appeal's order in paragraph 3 states in terms "the matter be remitted to the Upper Tribunal Immigration and Asylum Chamber for consideration of the grounds of appeal" and that is the only consideration that the Court of Appeal has directed, not a reconsideration of the conclusion of Judge Craig that as a lone female she could not be removed to Somalia. Of course the quashing of the decision simply meant that the dismissal of the appeal was quashed because that was the decision which was made by Judge Craig.

Notice of Decision

14. In those circumstances and for the reasons that I have given my judgment this appeal has to be allowed and it has to be recorded that the appellant is entitled to humanitarian protection because there would be a real risk of breach of her Article 3 rights were she to be returned to Somalia. The Secretary of State must make or grant such leave to her as is consistent with that finding.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date: 17th May 2016

The Honourable Mr Justice Collins