



IAC-AH-CO-V1

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

Appeal Number: AA/07348/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 April 2016**

**Decision & Reasons
Promulgated
On 9 May 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**MS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding of Counsel instructed by Sentinel Solicitors
For the Respondent: Mr C Avery

DECISION AND REASONS

1. The appellant is a citizen of Somalia born on [] 1976. She appeals the decision of the respondent dated 21 April 2015 to refuse her protection claim. The hearing came before a First-tier Judge on 14 December 2015 when the appellant was represented by Mr Harding, as she was before me.

2. The appellant arrived in this country on 17 October 2014. She made an application for asylum on 30 October 2014 with her four daughters as her dependants. This application was refused by the Secretary of State on 21 April 2015.
3. At the hearing the judge was provided with a bundle of documents to which he refers in paragraph 7 of his decision. The appeal came before the judge on 7 October 2015 but was adjourned part heard to enable the appellant's siblings to give oral evidence in support of her appeal. On 14 December 2015, at the adjourned hearing, the judge was provided with witness statements from the appellant's brother and sister who were both British citizens. A further bundle was prepared for that hearing.
4. The judge records that Mr Harding summarised the basis of the appellant's protection claim as being a fear that upon return to Mogadishu she would be returning as a minority clan member without a network of family or clan support which would expose her and her children to forced marriage and FGM and a general fear of reprisals from Al Shabaab pursuant to the threats previously made by Al Shabaab against the appellant. The appellant has consistently claimed to be a member of the minority Reer Hamar, sub-clan Faqi, and the judge found that this was not in issue before him and he accepted accordingly that the appellant was a member of this minority clan. The judge confirmed that he had had regard to all the documentary evidence before him. He heard oral evidence from the appellant and her siblings.
5. For reasons set out at length in the decision the judge did not find the appellant to be a credible witness. The judge's negative credibility assessment is not the subject of challenge. The points accepted by the judge were recorded by the author of the grounds of appeal to the Upper Tribunal (not settled by Mr Harding) namely 1) the appellant is a Somali national, 2) the appellant is from Mogadishu, 3) she is a member of the Reer Faqi minority clan and it was not in dispute that the appellant was a woman with four daughters aged 10, 14, 15 and 17.
6. The judge did not accept the appellant's account regarding the past events she claimed triggered her departure from Somalia and stated in paragraph 27 of his decision as follows.

“Given the findings I have made in this decision, I have taken the same into account in light of the guidance of the Upper Tribunal in **MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)**. It was concluded in **MOJ** that a person, like the appellant, who is an ordinary civilian or returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection. In particular, the appellant would not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by

the authorities as a possible Al Shabaab supporter or being viewed with suspicion by Al Shabaab. Indeed, I take note of the durable change noted by the Upper Tribunal in **MOJ** of the Al Shabaab withdrawal from Mogadishu having been completed and there is no real prospect of any re-established presence within the city. Notwithstanding that I have not accepted the appellant's account of past events, this background position would further undermine any assertion that a fear of Al Shabaab within Mogadishu is well-founded. Moreover, it was concluded in **MOJ** that there is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West, which again has direct relevance and undermines any claim that the appellant would have any well-founded fear of forced recruitment to Al Shabaab either for herself or her children upon return to Mogadishu. Finally, I take into account, in particular, that the appellant is a person who would be returning to Mogadishu with a network of familial support and financial assistance available, both within Mogadishu and from outside Somalia, and is not therefore a person who would be without such support upon return. I believe that upon return to Mogadishu the appellant would have available to her, as she did prior to her departure from Mogadishu, an effective network of close familial, clan and financial support from her family and clan members within Mogadishu and from her immediate and numerous family members living abroad. Therefore, in line with the guidance in **MOJ** I find that it would be reasonable to expect the appellant to return to Mogadishu with her children and that upon return she and her children would not be at real risk or have any well-founded fear of persecution."

The judge went on to dismiss the appellant's humanitarian protection appeal in relation to the appellant's Article 8 claim. The judge noted that the appellant would be returned to Somalia with her children as a family unit and concluded his decision as follows:

"34. The appellant's children are currently aged 17, 15, 14 and 10. I have given consideration to the best interest of these children as a primary consideration. I take into account that they have at all times been living with their mother (the appellant) both previously in Somalia and since their arrival in the United Kingdom just over a year ago. Prior to their arrival in the United Kingdom they were residing in Somalia all of their lives, apart from the four days or so they spent in Kenya en route to the United Kingdom. The children are all Somali citizens and would be returning to the country of their citizenship and birth and to a culture and society with which they are totally familiar and accompanied by their mother. They and their mother would also have available to them the network of familial, clan and financial support to which I have already referred. In all the circumstances, I consider it is in the best interests of these

children to be with their mother and that there is no reason why this family unit should not be expected to return to Somalia.

35. I have taken into account that every state has the right to control the entry of non-nationals into its territory. There is no obligation on the respondent to respect the choice of residence of the appellant. It has long been recognised that Article 8 is not to be regarded as a vehicle for circumventing the Immigration Rules and immigration control. I recognise that I need to balance the individual interests of the appellant and her children against the public interest in maintaining effective immigration control. I have had due regard to the public interest considerations to be taken into account under Section 117B of the 2002 Act. In this particular appeal, I take into account that I have found that the appellant has manufactured and fabricated a claim to asylum and I find that this gives added weight to the public interest in this appeal in maintaining effective immigration control. It is also provided under Section 117B that little weight should be given to any private life established by a person at a time when that person's immigration status is precarious or whose present is unlawful.

36. I see no reason why the appellant should not be expected to return with her children to Somalia. I believe that she would be able to return to a network of familial and clan support there, as well as have available a network of financial support from relatives both inside and outside Somalia. She would be able to maintain contact with any relatives and acquaintances in the United Kingdom or elsewhere through modern methods of communication, as indeed she did prior to her departure from Somalia. She would also be able to renew her former acquaintances in Somalia. The appellant is an adult aged 39 and in good health. It was confirmed at her substantive interview that her children have no medical conditions. The appellant and her children would be returning to their country of birth and citizenship, where they resided all of their lives until leaving Somalia for the United Kingdom only just over a year ago. In all the circumstances, I can find nothing compelling in the appellant's circumstances to warrant leave to remain outside the Immigration Rules and I am satisfied that the respondent's decision was proportionate."

7. Mr Harding confirmed that the negative credibility assessment was not the subject of challenge. However the judge had failed to make clear findings. Although she had clearly rejected the claim that the husband and children had been abducted she had not made it clear whether they had disappeared or were in the family home. He had not made clear the points that he had accepted. He submitted that paragraph 25 of the determination could have been expected to make the matters clear. More was required in a case where a female accompanied by four daughters

was to be returned. All the appellants in the country guidance case were male.

8. Mr Avery referred to the substantial adverse credibility findings. The judge had clearly found that the account given about the kidnapping was untrue and had made reference to her having many relatives and an extensive network of support in paragraphs 22 to 24 of the determination. She had made attempts to conceal this support.
9. In response Mr Harding submitted that the judge had failed to make clear findings on an important matter and the determination should be set aside for a fresh hearing.
10. At the conclusion of the submissions I reserved my decision. I have carefully considered the points advanced. I remind myself that I can only interfere with the decision if it was materially flawed in law.
11. As the negative credibility assessment is not the subject of challenge I will not set out at length the extensive critique of what the appellant had claimed and the judge's devastating analysis of it. Mr Avery referred to paragraphs 22 to 24 of the decision. The judge noted in paragraph 22 that at interview the appellant had confirmed that she had had no problems living with relatives in Hamr Jajab. The determination continues

“Bearing in mind that this is in Mogadishu this would indicate that she had no problems remaining in Mogadishu and had no fear in doing so. Moreover, any claim that she was in hiding with her relatives or had a fear for her safety is, in my view, seriously undermined by the fact that she has given an account of returning to the area of her former residence in Karan on no less than six occasions, allegedly to make enquiries regarding the whereabouts of her husband and children. ...”

I will not reproduce the rest of this paragraph where the judge rejected the explanation given by the appellant of why she was able to return to her home area without being recognised but it is perhaps relevant to note the last sentence of the paragraph which reads as follows.

“The appellant's account simply does not run true and I do not accept that she would have returned to her home area on no less than six occasions if she really had any fear of doing so or there was any truth in the account she has given of past events at the core of her claim to asylum.”

12. In paragraph 23 the judge notes that the appellant confirmed during cross-examination that she had an aunt, uncle and cousin in Karan and many cousins in Hamar Weyne in Mogadishu, as well as in Hamr Jajab. She also confirmed at the interview that prior to her husband's alleged abduction in June 2014 “he had provided her with full financial support and that following his alleged abduction she had been provided with financial

support by her relatives in Mogadishu.” She stated at interview that if she had any problems in Somalia her clan were available for assistance.

13. The judge notes in paragraph 24 the stark contrast to what the appellant had previously said and her claim in her witness statement dated 9 September 2015 that she had no family or clan affiliation in Mogadishu, no access to financial assistance from anywhere else, no relatives in the United Kingdom or Switzerland who could provide her with financial support and that when she was previously in Somalia she was reduced to begging for assistance. The judge found the appellant’s attempt to conceal the existence of any such support was a further demonstration of her propensity to fabricate matters as she had gone along and to change her account to embellish her chances on appeal. The judge found the appellant to be devoid of any credibility.
14. It is somewhat ambitious in my respectful view to criticise the judge for a lack of clear findings in all the circumstances. The judge rejected the appellant’s claim for an abundance of reasons in a very carefully reasoned decision. It is said that the judge should have found whether or not the appellant’s husband was still in the family home. The appellant put forward an account which the judge wholly rejected. The judge found that the appellant had made six visits to her home area to make enquiries about her husband and children and found that she would not have returned to the home area had she any fear of doing so. The appellant had put forward a false case which the judge rejected and I am not satisfied in the circumstances of this case that it was necessary for him to do any more. The judge stated that he believed

“That upon return to Mogadishu the appellant would have available to her, as she did prior to her departure from Mogadishu, an effective network of close familial, clan and financial support from her family and clan members within Mogadishu and from her immediate and numerous family members living abroad.”
15. He correctly applied the guidance in **MOJ** and found that it would be reasonable to expect the appellant to return to Mogadishu in such circumstances.
16. Although it was not developed before me Upper Tribunal Judge Eshun granted permission on paragraph 4 of the grounds dated 29 February 2016. It was said that the country guidance case only concerned adult male Somali claimants and “thus the consequent need for a particularly careful and nuanced analysis as to the risk facing women and children on return to Mogadishu which is of course the position in the instant case.” Reference was also made to material postdating **MOJ** to which it was submitted had not been adequately addressed.
17. As I say these points were not developed by Mr Harding before me. In my view the judge was correct to apply the country guidance and he was also

presented with further material which he records in paragraph 7 of the decision which he confirms in paragraph 11 that he had carefully considered. I find no error of law in the judge's approach to the material before him and he correctly applied **MOJ** in the circumstances of this case. I am not persuaded that the grounds or arguments raise any material error of law in the decision of the judge.

Notice of Decision

Appeal dismissed on asylum, humanitarian protection and human rights grounds.

Anonymity Decision

The First-tier Judge made an anonymity order and it is appropriate to continue that order in the light of the fact that children are involved.

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.

FEE AWARD

No fee has been paid or is payable and I make no fee award.

Signed

Date 3 May 2016

G Warr, Judge of the Upper Tribunal