



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/12273/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 19 October 2017**

**Decision & Reasons
Promulgated
On 19 October 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**F O
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Karnik, Counsel

For the respondent: Mrs Peterson, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant's name because this decision refers to her protection claim.

Summary of asylum claim

2. The appellant claims to be a citizen of Somalia who is at risk of persecution by reason of her Ashraf minority clan status together with the fact that she will be returned as a lone woman.

Background history

3. The appellant arrived in the UK and claimed asylum in January 2010. She was refused asylum and her appeal against that decision was dismissed by the First-tier Tribunal in a decision dated 19 April 2010. The appellant made fresh representations and in a decision dated 8 September 2015 the respondent refused her asylum claim.
4. The appeal against this decision was dismissed in a decision dated 26 April 2017. The First-tier Tribunal did not accept much of the appellant's account and rejected her claim to be a Somali citizen from the Ashraf clan, whose first husband had died.
5. In a decision dated 13 July 2017 Upper Tribunal Judge Pitt granted permission to appeal observing that the First-tier Tribunal failed to take into account, inter alia, the undisputed evidence from the appellant's Somali Ashraf husband and the evidence that the appellant is not entitled to lawful residence in Kenya.
6. The respondent submitted a rule 24 notice dated 2 August 2017 in which it was submitted that the First-tier Tribunal's findings were open to it.

SSHD concession

7. At the beginning of the hearing I indicated a number of provisional concerns in relation to the First-tier Tribunal's credibility findings. Mrs Peterson agreed that the decision findings contain important gaps and material inconsistencies. She conceded that the errors of law are such that the decision should be set aside. Mrs Peterson was entirely correct to make this concession for the reasons I identify below.

Error of law discussion

8. I am satisfied that the First-tier Tribunal credibility findings contain numerous material errors of law such that the decision must be set aside and remade by a different First-tier Tribunal Judge.
9. First, the First-tier Tribunal failed to take into account or provide adequate reasons for rejecting important evidence, in particular:
 - (i) evidence from the appellant's second Somali Ashraf husband

that he can verify that his wife is a Somali Ashraf “*because they know each other from the accent and the dialect and their culture*” – see [18]. Indeed, Mrs Peterson acknowledged that there are no clear findings of fact regarding the evidence provided by the appellant’s second husband at all;

- (ii) the appellant’s own evidence that she was told her first husband died and her second husband’s evidence as summarised at [19] that when they got married, the Sheikh who conducted the service made sure the first husband was deceased;
- (iii) medical evidence that the appellant has undergone type 3 FGM, a practice more common in Somalia than in Kenya;
- (iv) the position of the appellant’s vaccination scar is consistent with an early childhood in Somalia and not Kenya;
- (v) the conclusion of the Sprakab report that the appellant speaks a variety of South Somali found in Kenya and certain parts of southern Somalia, such as the Gedo area. This is entirely consistent with the appellant’s account that she was born in the Gedo region and lived there until she was taken to Kenya to reside in refugee camps when she was 4 i.e. in 1993, when Somalia was at civil war;
- (vi) country background evidence on the plight of Somalis in Kenya.

10. Second, the First-tier Tribunal findings contain inconsistencies on two pivotal aspects of the appellant’s claim.

- (i) The First-tier Tribunal finds at [38] that the appellant is of “*Somali extraction but has lived in Kenya throughout her life*”, yet at [39] appears to accept that the appellant and her mother may have lived in Mogadishu (but went on to find this does not make the appellant Somalia).
- (ii) At [40] the First-tier Tribunal bases its conclusion that the appellant will not be returned to Somalia as a lone woman on the absence of evidence that her first husband is dead, yet appears to accept that the appellant has met and married and is having a baby with her second husband at [44], who supports her in the UK.

11. Third, the finding that the appellant is Kenyan and can lawfully reside there is unsupported by any evidence, save for the Sprakab report, and in any event inadequately reasoned. The Sprakab report concludes that the appellant’s use of language renders it equally likely that she is from Kenya or the Gedo region of Somalia. The First-tier Tribunal finds at [41] that the appellant has produced no

evidence that she would not be admitted back into Kenya and is “*therefore satisfied that she is Kenyan*”. The First-tier Tribunal has given no reasons for rejecting the appellant’s evidence as supported by her second husband that she was living in Kenya on a temporary basis and has no basis to reside there lawfully. No reference has been made in the findings of fact to the country background evidence supporting the appellant’s claim. Such evidence was highlighted to the First-tier Tribunal (see by way of example [28]) but credibility findings have been reached without addressing this evidence.

Conclusion

12. When the errors identified above are considered together I am satisfied that the First-tier Tribunal’s findings are inadequately reasoned, and the First-tier Tribunal has materially erred in law.

Disposal

13. I have had regard to para 7.2 of the relevant *Senior President’s Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided, with the agreement of both representatives, that this is an appropriate case to remit to the First-tier Tribunal. This is because completely fresh findings of fact in relation to detailed evidence are necessary.

Decision

14. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
15. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
19 October 2017