



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

Appeal Number: PA006322017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26 July 2017**

**Decision & Reasons  
Promulgated  
On 18 August 2017**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**S H A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Naik, Counsel instructed by Islington Law Centre  
For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original

appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of her protection claim.

2. This is an appeal against the decision promulgated on 11 May 2017 of First-tier Tribunal Judge Seelhoff which refused the protection claim of the appellant.
3. This case has a somewhat complicated history. For the purposes of this decision the background is as follows. The appellant is from Somalia. It is accepted that she is from the Ashraf minority clan and originates from El Wak in the Gedo area.
4. The appellant married in 1990. Her oldest child, a daughter, was born in 1992. Her second child, a son, was born in 1993.
5. The appellant divorced her first husband around 1993. She married her second husband in 1994. Her first husband died in 1995. The appellant and her second husband did not have children. In 2000 the appellant was raped in front of her husband by clan militia. In 2001 her second husband left Somalia because of the difficulties there. The appellant and her children from her first marriage remained in Somalia, living with the family of her second husband.
6. It was then understood by the appellant and her family that her second husband had died. Her brothers and her first husband's family pressured her to marry her first husband's brother and she did so. She had three children from that marriage, twins born in 2001 and a son born in 2005.
7. The appellant then discovered that her second husband was not dead but was living in the UK with refugee status. Her third husband and his family agreed that her second marriage remained valid and that the third marriage should not have been contracted. The appellant then travelled to Ethiopia in 2006 with four of her children, her oldest child remaining in Somalia. The appellant was granted leave to enter the UK as the dependant of a refugee, her second husband. In 2008 she came to the UK, leaving the children in the care of her sister in Ethiopia. She visited them in 2009.
8. The appellant and her second husband had a child together in the UK in 2009 but their relationship broke down and they separated in 2010. The appellant arranged for her four children in Ethiopia to make a family reunion application to join her. Only her eldest son was granted entry clearance.
9. In December 2012 the appellant learned that her daughter who had remained in Somalia who had married and became pregnant, had been killed. The appellant maintains that she was told that this was because it had become known to Al Shabab that the appellant had entered into a

bigamous or adulterous marriage with her third husband. The appellant maintains that this event led her to claim asylum in her own right on 7 December 2012.

10. The respondent refused the appellant's asylum claim in a decision dated 6 January 2017. The appellant appealed and the hearing before Judge Seelhoff took place on 25 April 2017. The decision refusing the appeal was promulgated on 11 May 2017.
11. The appellant raises three grounds of challenge against the decision of the First-tier Tribunal:
  - (i) She is at risk of mistreatment in Mogadishu for a Refugee Convention reason and the First-tier Tribunal failed to assess this aspect of her claim
  - (ii) She cannot relocate to an area in Somalia where she will not face mistreatment as she cannot travel safely from Mogadishu to El Wak
  - (iii) Even if she could travel safely to El Wak, she would be at risk there as someone perceived to transgressed Sharia law because of her improper marriage to her third husband

### Ground One

12. At [57] the First-tier Tribunal Judge found that the appellant faced an Article 15(c) risk in Mogadishu as she would be returning as a single woman, a member of a minority clan with no formal links to the city and had limited access to funds. That finding followed the guidance of the Upper Tribunal in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) at (xii) of the head note:

“(xii) ... On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.”
13. The appellant maintains that the First-tier Tribunal was required to find, first, whether she was a refugee if returned to Mogadishu, as was proposed, and, only if that was not shown to be so, whether she faced an Article 15 (c) risk. She had argued before the First-tier Tribunal that as a lone, minority clan woman with no family or clan protection available in Mogadishu, she had made out a claim to face persecution as a member of a particular social group.

14. The appellant relied on the country information showing a particular risk to women, for example, the respondent's "Country Information and Guidance Somalia: Women fearing gender-based harm/violence" (CIG) which states at 1.2.15:

"There is generalised and widespread discrimination towards women in Somalia. Sexual and gender-based violence - including domestic violence, rape, sexual abuse, exploitation and trafficking - is widespread and committed with impunity by a range of actors including government security forces, members of armed opposition groups, militias, family and community actors and AMISOM peacekeepers. Internally Displaced Persons (IDP) women, especially those from minority clans, are particularly exposed to sexual and gender-based violence."

15. The appellant also relied on paragraph 1.2.7 of the CIG which states that "Female returnees in particular face threats against the person in IDP camps, where the Somali National Police Force are unable to provide protection, especially those belonging to minority clans."
16. It was not suggested before me for the respondent that the appellant did not face persecution as a member of a particular social group in Mogadishu. The respondent's defence to this ground was that in order to show that she is a refugee in Mogadishu, the appellant must also show that it is not reasonable to expect her to relocate to avoid persecution. The failure to assess whether she is a refugee in Mogadishu could only be material if one of the other two grounds had merit and the appellant was able to show that she either could not access El Wak or would still be at risk there. That appeared to me to be a correct analysis and it is therefore necessary to look at the second and third grounds before reaching a final decision on the first ground.

## Ground Two

17. The First-tier Tribunal's view on the ability of the appellant to travel to El Wak is at [59]:

"It was not suggested in Counsel's submissions that the Appellant could not travel to El-Waq."

18. However, the skeleton argument for the appellant that was before the First-tier Tribunal put forward at paragraph 42 that the Tribunal was required to consider the risk of the appellant's travel from Mogadishu to her home area.
19. Further, the skeleton argument referred the First-tier Tribunal to the CIG on risks to women travelling in Somalia. Paragraph 1.2.17 of the CIG stated:

"Furthermore 'women travelling without male friends or relatives are in general likely to face a real risk of sexual violence' ..."

and at paragraph 1.2.19:

“For areas of south and central Somalia which are not under the control of Al Shabaab, AMM and others found that family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation. Travel by land across southern and central Somalia to a home area or proposed place of relocation may well, in general, pose real risks of serious harm, not only from Al Shabaab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence (see paragraphs 604-605).”

20. The respondent argues that, albeit the First-tier Tribunal should have made an assessment of the risk of the journey to El Wak, this ground has no merit as it was found that the appellant would be able to get assistance from her family in order to return home. The First-tier Tribunal Judge’s assessment of the availability of support from her brothers is found at [48] and [49]:

“48. ... there is no reason to believe that her brother would no longer be in the region. The Appellant would also likely have significant clan ties in that area albeit to her minority clan.

49. The Appellant has claimed that she is not on good terms with her brothers on a number of occasions. However the Respondent has not accepted this because the Appellant’s brothers seem to have been active and involved with her marriages albeit the Appellant also says that their support was typically dependent on what they stood to gain from her being in the relationship she was in at any given time. Even if the Appellant were to go to El-Waq she would continue to have a son in the UK and access to resources from here. If the Appellant’s brothers believed that they would gain from her marrying a man who lived in England, it seems logical that they would believe that they might gain from her having a son living lawfully in England. The Appellant would be returning to Somalia with some basis for bargaining for support from her family and even if she is not on good terms with them it is reasonable to expect her to access what support she can.”

21. The First-tier Tribunal judge goes on at [58] to find that:

“Given that the Appellant is likely to have significant clan ties and potentially family ties in that city (El Wak) I find that her removal to Somalia would not place the UK in breach of its obligations under the refugee Convention.”

22. In my judgment, the findings of the First-tier Tribunal on the appellant’s brothers being prepared to offer her some support, even if only out of self-interest, were made in the context of the appellant having managed to return to El Wak. There was no assessment of the risks of the journey and whether her brothers would travel to Mogadishu to assist her.
23. The country evidence suggests that the risks to women are, in general, high and there is the specific country evidence on attempting to relocate

set out above in [19]. In that context, as indicated in the grant of permission to appeal it is not:

“inevitable that the judge would also have found that the appellant would have male relatives who would be prepared to meet her at Mogadishu airport and take her home or that there would then be no risk to the appellant en route”.

24. I am satisfied that the decision discloses a material error in failing to assess whether the appellant could be expected to travel from Mogadishu to El Wak and that this aspect of the appeal must be re-made.

### Ground Three

25. The appellant’s third ground is that even were it possible for her to reach El Wak she also faces a risk of persecution for a Refugee Convention reason there and the First-tier Tribunal did not assess that aspect of her claim correctly. The conclusion on this aspect of the claim is set out at [58]:

“In respect of return to El-Waq, I reach a different decision. I do not accept that there is any evidence of any specific risk to the Appellant over and above the risk to other Somali women in that region. I do not accept that there is any evidence to show that Al-Shabab currently have significant control over that city. I do not accept that there is any rational basis for a belief that the Appellant is personally at risk of being targeted on account of her history. There is no rational reason for believing that Al Shabab would become aware of the Appellant’s history nor that they would consider targeting her to be a priority in a city that they do not control. The risk to the Appellant in my assessment is no higher than the risk to any other woman in that city. Given that the Appellant is likely to have significant clan ties and potentially family ties in that city I find that her removal to Somalia would not place the UK in breach of its obligations under the refugee Convention.”

26. In support of this ground, the appellant relied on paragraph 12 of her skeleton argument before the First-tier Tribunal which set out her claim to be at risk in El-Wak at 12.g, thus:

“she is woman who would be considered to have contravened Sharia law by virtue of (sic) because of having married her third husband when her second husband was still alive unbeknown to her and would also face risk from Islamic militants, including Shabaab.”

27. The appellant maintains that this aspect of her claim remained to be decided even if it was not accepted that her daughter had been killed because of her mother’s perceived adultery. The First-tier Tribunal was therefore in error in [58] and also at [47] in stating that:

“Because I have not accepted that the Appellant’s daughter is likely to have been killed in the circumstances described, the Appellant would at most be

facing risks on return to Somalia as a sole woman of minority claim ethnicity.”

28. It was submitted that the claim of risk in her home area also remained to be decided even where the First-tier Tribunal found at [50]-[52] and [58] that Al Shabab was no longer active in El Wak. Her argument before the First-tier Tribunal was that the risk arose not solely from Al Shabab but from other pro-Islamic militia and sections of society in the context of the disproportionate mistreatment of women in Somalia.
29. This part of her claim also required determination even if some protection was available from her brothers and her clan as found at [48]-[50] and [58] given the country evidence of a heightened risk to women and an even higher risk to minority clan women. Her vulnerability was shown by the undisputed history of her having been raped in front of her family in 2001, notwithstanding the presence of her husband and the rape taking place in the area where it is presumed she would be able to access protection from her brothers and other minority clan members. The risk to her could only be greater now, without the protective presence of a husband and after her perceived adultery.
30. It is not my conclusion that the assessment of this part of the appellant’s claim discloses a material error on a point of law. The claim is that the appellant will be perceived as having transgressed Sharia law or Islamic mores. The appellant may well have such a subjective fear but it is not made out when assessed against the country evidence. The materials before the First-tier Tribunal did not show that Al Shabab or other Islamic militia had a meaningful presence in El Wak or that civilians in the area acted in the manner feared by the appellant. As the First-tier Tribunal indicated at [45], it is not clear how her history of having married her third husband whilst her second husband, unbeknownst to her, was still alive, would become known to third parties. Her third husband and his family did not mistreat her on this basis but accepted the situation and allowed her to travel to Ethiopia with the children whose fathers were both from that family.
31. For these reasons I did not find the third ground had merit.

#### Re-making of the protection claim

32. There was agreement between the parties that the evidence for the re-making was contained in the documents before me and that there was no requirement here for a rehearing. The parties made submissions on the particular points they wished to highlight in the remaking of the appeal.
33. I proceeded to remake the decision. As above, the only aspect of the claim that must be re-made is an assessment of whether it is possible for the appellant to travel from Mogadishu where she would be at risk to her home area of El Wak where she would not. If she could show that she could not relocate, she would make out a claim to be a refugee in

Mogadishu. If it was reasonable for her to travel to El Wak she would not have shown that she was in need of international protection.

34. I do not go behind the finding of the First-tier Tribunal that the appellant could expect some support from her brothers and clan if she returned to El Wak as it was not subject to challenge. It remains the case that the appellant has been consistent throughout this claim from her first witness statement that was before the respondent, in her asylum interview and in her further witness statement produced for the appeal that she was, in effect, regarded as a chattel to be used for their own gain by her brothers. The findings of the First-tier Tribunal did not indicate otherwise, stating that she would be a position of having to bargain for support on the basis of what she might be able to provide from her son in the UK.
35. I considered this aspect of the appellant's profile against the materials cited above in [12] on the endemic gender-based violence in Somalia, the degree of risk being heightened for a minority clan woman. There is the additional material set out at [17] above on attempting to travel in order to relocate giving rise to "real risks of serious harm" in general, that risk being heightened for women and still more so for minority clan women.
36. My conclusion is that the country material supports the claim that it is not sufficiently likely that the level of support likely to be available to this particular appellant from her brothers or minority clan members from El Wak would not extend to them being prepared to take the risk of travelling to Mogadishu to meet her and accompany her back to El Wak.
37. It is unarguably not reasonable for the appellant to attempt to return to El Wak unaccompanied. She has therefore shown that she is a refugee because of the persecution she would face in Mogadishu as a lone, minority clan woman with no protection or connections there at all.
38. The appellant's claim for asylum and under Article 3 succeeds on that basis, therefore.

### **Notice of Decision**

39. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
40. I remake the asylum appeal as allowed.
41. I remake the Article 3 claim as allowed.

Signed   
Upper Tribunal Judge Pitt

Date: 16 August 2017