



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/06527/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23<sup>rd</sup> February 2018**

**Decision & Reasons  
Promulgated  
On 3<sup>rd</sup> April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**HABS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Collins, Counsel, instructed by Sentinel Solicitors  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. 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.

2. The Appellant is a citizen of Somalia whose date of birth is recorded as 4<sup>th</sup> April 1997. She made application for international protection as a refugee. On 28<sup>th</sup> June 2017 a decision was made to refuse the application but she appealed.
3. The appeal was heard on 8<sup>th</sup> August 2017 by Judge of the First-tier Tribunal Woolf sitting at Hatton Cross. She dismissed the appeal. Not content with that decision application for permission to appeal was made but in the first instance refused by Judge of the First-tier Tribunal Frankish. A renewed application was lodged on 1<sup>st</sup> November 2017. Upper Tribunal Judge McWilliam on 9<sup>th</sup> January 2018 granted permission principally because, as she said:

*"It is arguable that the judge did not consider whether the Appellant would be at risk on return because of her gender and membership of a minority clan in the light of the evidence produced by the Appellant. It is arguable that **MOJ (Return to Mogadishu) (Somalia) (CG) [2014] UKUT 00442** has limited application because of the Appellant's gender."*

Permission was granted on all grounds but that was the focus.

4. I make reference to where the focus was because Mr Walker quite properly accepted that not only was it arguable but that the appeal should be conceded on that basis.
5. The error is material, I find, and so the decision is to be set aside. The question for me then is whether to remake the decision or remit to the First-tier Tribunal. Material in this case is the fact that since the appeal was heard in the First-tier Tribunal the Appellant has given birth to a child. It may be (it would be improper for me to make findings at this stage) that that child is a British national. If the child is a British national then that may well have more relevant Article 8 repercussions than would other be the case.
6. This matter being remitted to the First-tier Tribunal affords the opportunity to the First-tier Tribunal to have regard to all the material facts now relating to this case and affords to the Secretary of State the opportunity to consider the Appellant's position in the light of all of the now known facts, assuming that the Appellant's solicitors set them out for the Secretary of State's consideration.
7. In the circumstances my finding is as follows:

### **Decision**

The decision of the First-tier Tribunal contained a material error of law and is set aside. The appeal is remitted to the First-tier Tribunal to be made afresh with no preserved findings. For the avoidance of doubt, I was not asked by Mr Collins to preserve any findings but had he done so I would have not thought it appropriate in this particular case.

**Signed**



**Date 29 March 2018**

**Deputy Upper Tribunal Judge Zucker**