



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/02330/2014

THE IMMIGRATION ACTS

Heard at Manchester  
On 4 November 2015

Decision and Reasons Promulgated  
On 9 November 2015

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

CC

ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Khan, Counsel

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the 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.*

1. The appellant is a citizen of Somalia. He has made an asylum claim and I have made an anonymity direction for this reason.

### **Procedural history**

2. In a decision promulgated on 10 July 2014 First-tier Tribunal Judge Herwald dismissed the appellant's appeal on asylum and human rights grounds. The judge did not accept that the appellant faced a real risk of persecution in Somalia. He also did not accept the credibility of the asserted relationship between the appellant and his spouse, and their children.
3. In grounds seeking permission to appeal it was submitted that the judge failed to give sufficient reasons for not following the guidance in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) and failed to consider the documentary evidence when making findings regarding the appellant's family life.
4. Permission to appeal was granted by Upper Tribunal Judge Coker on the basis that it was considered to be arguable that there was insufficient background evidence available to Judge Herwald to enable him to depart from AMM.
5. The SSHD has submitted a rule 24 response in which it is submitted that the judge's findings were open to him.
6. The matter now comes before me to determine whether or not the decision of the First-tier Tribunal contains a material error of law.

### **Hearing**

7. At the hearing Ms Khan relied upon the grounds of appeal. She also submitted that the judge failed to carefully scrutinise the documentary evidence available before making adverse credibility findings. Mr Harrison agreed that the judge had erred in these respects. I agree with the submissions of both representatives. As Mr Harrison has conceded that the decision contains material errors of law, I have set out my reasons for allowing the appeal briefly below.
8. Both representatives agreed that findings of fact need to be entirely remade and these will need to address the appellant's likely circumstances in Somalia as well as his family life in the UK. Both representatives agreed that such a hearing is likely to take ½ a day and in the circumstances it was appropriate and proportionate for the matter to be remitted to the First-tier Tribunal for findings to be remade *de novo*. Both representatives also agreed to the directions I set out below.

## Discussion

### *Asylum*

9. The judge was entitled to find that there had been significant changes to the situation in Somalia such that there were aspects of AMM that no longer represented the current position. The evidence on the reduced role of Al Shabab was clearly set out in the SSHD's decision letter and in the absence of any other country evidence the judge was entitled to rely on this. The judge however failed to set out which aspects of AMM had been affected by the relevant changes and which had not. AMM is a very detailed decision (655 paragraphs) with a lengthy headnote covering an array of issues relevant to the complex and fluid situation in Somalia, of potential relevance to this appellant. As observed in the more recent Somalia country guidance decision MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) (which postdates the decision under appeal) at [333] some of the country guidance in AMM remains appropriate.
10. In these circumstances it is difficult to understand how the judge assessed risk on return for this appellant and by reference to which background evidence. The judge considered there was no real risk to the appellant because he would have family and / or clan protection but has not conducted an assessment of this by reference to any background evidence whatsoever. The judge has clearly found it necessary to depart from AMM [18(e)] and then found that the appellant is not at risk [19] but has failed to explain which background evidence he has used in order to assess risk on return. The SSHD's decision letter summarised the contents of a Danish-Norwegian fact-finding report from May 2013 but the judge has not indicated which background evidence he took into account as at the date of hearing in July 2014. I am satisfied and the SSHD has conceded that this constitutes a material error of law.

### *Article 8*

11. It is clear that notwithstanding a previous positive credibility finding the judge approached the appellant's case with a degree of scepticism [10]. The judge did not accept that the appellant was in a relationship as claimed and was 'not persuaded' he had a relationship with his (then two) children [27]. The judge also appears to doubt the genuineness of the biological relationship between the appellant and the second child of the family [37]. I accept Ms Khan's submission that in reaching these findings the judge has irrationally failed to take into account relevant evidence. The judge has made no mention of the second child's birth certificate which names him as father or the NHS maternity documentation, which confirmed that his wife expected a third child on 1 August 2014 and he was named as the father with whom 'full contact' was expected. The evidence that the appellant already had a child with his spouse and that she was pregnant with another was relevant to the claim that they were in a genuine and subsisting relationship.

12. In addition, the maternity documentation before the judge clearly demonstrated that the appellant's wife spoke English and used English when communicating about her medical care. This calls into question the judge's misplaced assumption that she did not speak English [36]. The judge has also assumed that the first (British) child had no real links to Britain and could relocate to her 'homeland' without taking into account that she was born British and was of school age and therefore clearly must have had links to Britain as a result of this.
13. I am satisfied and the SSHD has conceded that the judge has materially erred in law in assessing the appellant's family life.

### Decision

14. I find that the decision of the First-tier Tribunal contains an error of law and I set it aside.

### Directions

15. Both representatives agreed to the following directions:
  - (1) The appeal shall be remitted to the First-tier Tribunal, which shall make fresh findings of fact having used the decision of Judge Fountain as a starting point. TE: 2.5 hrs. Somali interpreter.
  - (2) The appellant shall provide the respondent with updated evidence to confirm his current relationship with his spouse and the circumstances of the children of the family unit, together with evidence to confirm his relationship with them, by 2 December 2015.
  - (3) The respondent shall provide the appellant with a summary of his position regarding the appellant's claimed family life before 6 January 2015.
  - (4) The appellant shall file and serve a paginated indexed bundle containing all evidence he wishes to rely upon 28 days before the hearing.
  - (5) The appellant shall file and serve a skeleton argument cross-referring to pages in the bundle and paragraphs in MOJ (*supra*) 14 days before the hearing.
  - (6) The respondent shall file and serve a summary of her position in light of the appellant's evidence and skeleton argument 7 days before the hearing.

Signed:

Ms M. Plimmer  
Judge of the Upper Tribunal

Date:  
4 November 2015