



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

Appeal Number: AA/04115/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2016**

**Decision & Reasons Promulgated
On 26 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS H U A

Respondent

Representation:

For the Appellant: Ms S Sreerahman, Senior Home Office Presenting Officer

For the Respondent: Ms F Kadic of Counsel at Shervins Solicitors

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by First-tier Tribunal Judge McDade dated 25 January 2016. The appeal relates to a decision by First-tier Tribunal Judge Omotosho whereby a Decision was promulgated on 16 December 2015. The Judge at the First-tier Tribunal had allowed the appeal on asylum grounds. The Secretary of State has appealed, but to ease following this decision I shall continue to refer to Ms Alasow as the Appellant and the Secretary of State as the Respondent.
2. The Respondent had appealed against the First-tier Tribunal Judge's decision and relied on grounds which can be summarised as follows:

- (1) The Judge had failed to adequately reason her determination in the light of the Country Guidance;
 - (2) The Judge's decision in respect of the Appellant's ability to relocate to Mogadishu was not adequate.
3. At the hearing before me Ms Sreeraman said she relied on the grounds of appeal. She said that the Judge had failed to follow the Country Guidance in **MOJ and others (Somalia) CG** [2014] UKUT 00442 (IAC). It was unclear and on what terms that the appeal was allowed on asylum grounds. At paragraph 34 the Judge said that the Appellant hailed from a minority clan, but there was nothing in clear terms as to why she had come to that decision. There was no reference to any particular objective evidence. The reference to the daughter was to be noted that there was no actual evidence of a grant of asylum to the daughter. As for paragraph 41 of her decision, the Judge had made findings that the Appellant had no ties to Mogadishu and that Internal Relocation was not available but the Judge again failed to make adequate findings and so the decision was fundamentally flawed. That was because again the Judge had failed to follow the Country Guidance.
 4. In her submissions in response Ms Kadic took me through the Judge's decision and submitted that the Judge did properly consider the claim for asylum. Although the Judge had not referred to Particular Social Group, that is what she must have meant. The Judge did not spell this out but that did not matter. The Appellant was from a minority clan and therefore at risk in Mogadishu. There was no support structure for the Appellant in Mogadishu. The friend of the deceased husband who had helped the Appellant to leave Somalia was not now there. The Appellant has a daughter in the UK and she herself has three children. She is on benefits. There was something missing from paragraph 39 of the decision but it was of no consequence.
 5. Ms Kadic agreed that there was no finding of the Appellant's daughter's asylum status in the UK although it had been mentioned in the witness statement. It was also the case that there was no actual finding in respect of the daughter's ability to financially assist her mother in Somalia, but again this was covered in the evidence. This was an elderly Appellant and she would be at risk on return to Somalia. I ought to dismiss the Secretary of State's appeal.
 6. I had reserved my decision but had invited the parties to make submissions as to what ought to be the outcome if I had found there to be a material error of law. Both parties submitted that the matter ought to be remitted to the First-tier Tribunal for hearing. Ms Kadic said that the favourable findings ought to stand whereas Ms Sreeraman submitted that the findings in respect of the inability to access support and funds ought to be set aside as it was wrongly made.
 7. I had reserved my decision which I now give.

8. In my judgment the Judge materially erred in law in failing to follow the Country Guidance decision in **MOJ and others (Return to Mogadishu) Somalia CG** [2014] UKUT 00442 (IAC). The Judge did refer to this decision but in my judgment, it is plain that she has failed to apply it in its entirety in respect of the steps that needed to be taken in respect of a proposed returnee to Mogadishu. I can well understand that the Judge was dealing with a 76 year old Appellant with medical ailments and that may have caused her to be swayed, but the answers to the matters the Judge was looking for were within that Presidential Tribunal's decision. Of course everyone would feel sympathy in such a case. I readily acknowledge that the Country Guidance is *guidance* but there had to be good reason to depart from it. There is no good reason for such a departure that I can detect from the Judge's decision.

9. The Country Guidance makes clear in the body of the decision but also in the headnote that,

"(ii) Generally, a person who is "an ordinary civilian" (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will 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 supporter of Al Shabaab or by Al Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country."

10. This Appellant was not more than "an ordinary civilian" and indeed she had left Somalia relatively recently in 2014. Nor did this Appellant come within the categories mentioned of,

"(iv) The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab's resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk."

11. Therefore the Judge needed to set out what it was that placed this Appellant at a particular risk in Mogadishu. The failure to do so was a material error of law.

12. Further, the Country Guidance made plain that,

“(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

- circumstances in Mogadishu before departure;*
- length of absence from Mogadishu;*
- family or clan associations to call upon in Mogadishu;*
- access to financial resources;*
- prospects of securing a livelihood, whether that be employment or self employment;*
- availability of remittances from abroad;*
- means of support during the time spent in the United Kingdom;*
- why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

(x) Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.

(xi) It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.

(xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. 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. Again there are no adequate findings that get near dealing with these matters. Paragraph 41 of the Judge’s decision is not reflective of the Country Guidance in terms of risk on return to Mogadishu. As I have said above, I note that Ms Kadic states that some of the resources/finances matters were dealt with in the witness statements. If that is correct then it was incumbent upon the Judge to make findings in respect of those witness statements and the evidence. The failure to do is also a material error of law.
14. Having reflected on the matter I am of the clear view that there are material errors of law in the Judge’s decision. I do not consider that the Judge’s decision can stand. The findings made have to be revisited and so there has to be a complete re-hearing. That re-hearing shall take place at the First-tier Tribunal. None of the findings stand.

Notice of Decision

The decision of the First tier Tribunal Judge contains material errors of law and is set aside.

The appeal shall be re-heard at the First-tier Tribunal.

An anonymity direction is made.

Signed

Date: 22 February 2016

Deputy Upper Tribunal Judge Mahmood