



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04339/2019

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre  
On: 2<sup>nd</sup> March 2020

Decision & Reasons Promulgated  
On: 5<sup>th</sup> June 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

MMA  
(anonymity order made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Ms Khan, Counsel instructed by WTB Solicitors LLP  
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Somalia. She appeals with permission against the decision of the First-tier Tribunal (Judge Buckley) to dismiss her protection appeal.

**Background and Matters in Issue**

2. The Appellant claimed asylum on arrival in the United Kingdom on the 9<sup>th</sup> October 2018. The basis of her claim is that she has received threats from al-Shabaab, who perceive her to be a 'collaborator' with Western interests: the Appellant had at the

time been working as an interpreter for a Turkish hospital in Mogadishu. The Appellant received these threats by telephone and text message in the summer of 2017. She changed her number, but continued to receive them. The caller threatened to kill her. The Appellant knew of at least one other woman who was murdered following such threats and so she took them very seriously. She moved house and started wearing a full veil in order to disguise herself on her way to and from work, but afraid for her life she left Somalia in December 2017. The Appellant placed reliance on the decision in MSM (journalists; political opinion; risk) Somalia [2015] UKUT 413 (IAC).

3. The First-tier Tribunal heard oral evidence from the Appellant and having done so it accepted that she was an interpreter working at the Recip Tayyeb Erdogan Hospital in Mogadishu and that she had received threats from al-Shabaab as claimed. It accepted that she had in this role received the President's wife when she had visited the hospital and that a clip of this meeting was broadcast on state television. It remains viewable on YouTube today. It further accepted that there was not in place in Mogadishu effective state protection for her and her family and that her rationale for not approaching the authorities was reasonable. It accepted that she could not reasonably be expected to carry on working and safeguarding herself by wearing a full face covering in the street. It went on however to dismiss the appeal. The Tribunal's central conclusion was that the Appellant was of 'low profile' and that as such she was not someone who was reasonably likely to continue to attract the adverse attention of al-Shabaab. In particular it found that the threats had abated after she had moved house and started covering her face. In the alternative the Tribunal found that the Appellant and her husband could move to another part of Somalia where the risk from al-Shabaab would be minimised.
4. The Appellant now submits that the First-tier Tribunal erred in law in the following material respects:
  - i) Perversity. The First-tier Tribunal accepted that the Appellant had in fact been targeted by al-Shabaab because of her work, but then went on to discount any future risk on the basis that she was 'low profile'. This is logically unsustainable.
  - ii) In respect of internal flight the Appellant points out that the Respondent had not raised this as an alternative and that no potential place of internal relocation had been identified. The Appellant is from Mogadishu, and this is where the threat to her was made.

### **Discussion and Findings**

5. In its decision the First-tier Tribunal cites extensively from the Respondent's Country Policy and Information Note *Somalia (South and Central): Fear of al Shabaab* published in July 2017. In that policy statement the Secretary of State expresses the view that a "person's profile will be important" in assessing any risk from al-Shabaab. The guidance, in summary, is that al-Shabaab has targeted individuals and institutions that it perceives to represent or support the 'International Community'. Such

individuals and institutions are regarded as 'legitimate targets' by al-Shabaab, but the onus is on the individual claimant to establish that he or she is reasonably likely to attract the adverse attention of the group.

6. As noted above, the First-tier Tribunal here accepted that the Appellant was of sufficient interest to have attracted the adverse attention of al-Shabaab. The group threatened on her on a number of occasions, going so far as to secure her new telephone number after she had changed it. Ms Khan submits that having reached that finding, it was irrational for the Tribunal to decide that the Appellant was not of sufficiently high a profile to attract the unwanted attention of al-Shabaab in the future. Either she attracted their ire or she didn't. Mr Tan defended the rationale of the decision on the basis that the Tribunal had distinguished the position of the Appellant pre-August 2017 and her position after it. Before then she had been targeted, but after she moved to her cousin's home in another part of Mogadishu, and took measures to disguise herself in the street, the threats abated. Mr Tan further pointed to the Tribunal's finding that the Appellant's family had not received any threats at all.
7. I am not satisfied that this was a rational conclusion for the Tribunal to have reached. Firstly, because the time frame in which the Appellant was free of threats was a relatively short one, lasting between August 2017 when she moved, and December 2017 when she left Somalia. There does not appear to be any evidential foundation for a finding that al-Shabaab had 'lost interest' in her. She played a pivotal role at the hospital - as a Turkish-Somali translator it is clear that the Turkish doctors with whom she worked would be facing considerable difficulties in doing their jobs without her. Those Turkish doctors, and the hospital itself, represented the very international community that al-Shabaab have vowed to expel from Somalia. The Tribunal's finding that the Appellant was as a result threatened by the group is therefore wholly consistent with the CPIN. The Appellant would be considered by al-Shabaab to be a 'legitimate target'. Second, the Tribunal itself recognises that it is not 'reasonable' to expect the Appellant to avoid persecution - in this case assassination - by moving house and wearing a disguise. This was the method by which she avoided further problems in the months before she left Somalia. Finally because there is, on the application of the country guidance and CPIN, no logical connection between the lack of threats made to members of the Appellant's family and any ongoing risk to her person: there is no evidence that al-Shabaab use threats against family members to try and produce the desired result of making individuals like the Appellant desist from co-operation with international organisations. All other things being equal, there was no reason to suppose that al-Shabaab would be any less interested in the Appellant today, than at the time that they were threatening her life.
8. The Secretary of State submits that all things are not, however, equal, since the threats of al-Shabaab have already produced the desired result, ie the Appellant leaving her job. Since she no longer works at the hospital, it is tempting to conclude that the risk to her must have entirely abated. Whilst this was not, in fact, the ratio of the First-tier Tribunal decision, it is the Secretary of State's response to the grounds,

inasmuch as Mr Tan thereby questions the materiality of any errors identified by Ms Khan.

9. As I note above, before the First-tier Tribunal Ms Khan had relied on the decision in MSM. That was a decision concerned with a journalist facing threats from al-Shabaab, and in respect of whom the Secretary of State made exactly the same point as advanced before me by Mr Tan: if he wished to avoid harm he could do so by giving up his job. The Upper Tribunal situated its analysis in the rights-based analysis discussed in HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31. MSM faced persecution for reasons of his imputed political belief – al-Shabaab threatened him because they perceived him to be engaged in activity contrary to their aims and values. Should MSM be required to give up that job, upon pain of death, because al-Shabaab didn't like it? The Tribunal noted that this was not a novel issue [at its §42]:

“The main issue in this appeal has arisen in cases beyond these shores. In Szatv v Minister for Immigration and Citizenship [2007] 233 CLR 18, the Appellant qualified as a civil engineer. Some years later, he began working as a journalist in a particular region of Ukraine, where he suffered harassment and physical maltreatment on account of his political views. He fled to Australia, where he sought asylum. The Refugee Review Tribunal rejected his claim on the ground that he could return to a different part of Ukraine where he would not be known and could work in the construction industry there. His appeal was allowed on the basis that the fallacy in the Tribunal's reasoning was that in order to avoid persecution the Appellant would have to forfeit the very right to express his political opinions without fear of persecution which the Convention is designed to protect. The same approach was applied by the High Court in Appellant S395/2002 v Minister for Immigration (216) CLR 473, at 489 especially. Notably, these decisions were cited with approval by the Supreme Court in HJ (Iran).

10. The central conclusion of the Tribunal in MSM is thus expressed in the headnote:

*“The Appellant is not to be denied refugee status on the ground that it would be open to him to seek to engage in employment other than in the media sector.”*

11. In the instant case the Appellant was not a journalist but an interpreter. Mr Tan submitted that this being a distinct species of employment the ratio of MSM was not directly transferable. The difficulty with that submission is that it overlooks the causal nexus of the feared harm. Al-Shabaab want to kill Somalis who help the international community because of their – imputed - political opinion. To deny such an individual protection on the grounds that they could meet the terms of the persecutor would surely be contrary to the aims of the Refugee Convention. I am accordingly satisfied that the error in approach by the First-tier Tribunal is material.
12. I might add that the evidence on why the Appellant is no longer working at the hospital is unequivocal: the reason that she left her job and fled the country was that

she was frightened for her life. The threats were received against the backdrop of the fact that she knew of at least one other Somali woman who had been murdered for working at the hospital. As Ms Khan points out, employment opportunities for Turkish-Somali interpreters are not thick on the ground. There were not many options open to the Appellant, who had gone to the trouble of learning Turkish precisely in order to obtain employment such as she had.

13. Accordingly, applying the ratio of MSM I find that the Appellant has a well-founded fear of persecution in Mogadishu for reasons of her imputed political opinion.

14. The second ground concerns the Tribunal's reasoning on internal flight. This consists of the following sentence at the end of paragraph 48:

“I find that internal relocation to an area not under al-Shabaab control with her husband on return is likely to be a reasonable option, and not unduly harsh in all the circumstances”.

15. There are a number of problems with that. First, it involves a transposition of the standard of proof. The question was not whether internal flight was “likely to be reasonable” it was whether it is “reasonably likely to be *unreasonable*”. The second is that it is not underpinned by any reference to the evidence – the Tribunal finds, with absolutely no justification, that the Appellant would be “likely to find another role as a translator in another area” but given the specialised nature of her profession it is difficult to see where that might be. The third is that it fails to take into account all of the foregoing arguments about risk, and the acceptability under the Refugee Convention of expecting the Appellant to sacrifice her profession in order to secure her safety. The fourth, this was not an argument pursued by the Respondent and fifth, the Tribunal nowhere identifies where the ‘safe’ area in question might be. Of these latter issues the parties before me were at a loss to understand where the Tribunal might have had in mind, this place where the Appellant could work as a Turkish interpreter but remain safe from al-Shabaab. Mr Tan thought perhaps it might be a reference to the other neighbourhood of Mogadishu where the Appellant took refuge with her cousin; Ms Khan thought the decision refers to an unspecified area outside of Mogadishu. That the parties were unable to agree on what the decision means is perhaps a good indication that this finding is flawed for lack of clarity. For all of those reasons, I am satisfied that the finding on internal flight cannot stand. I set aside the First-tier Tribunal decision and re-make the decision by allowing the appeal.

### **Anonymity Order**

16. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others,

both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

**Decision**

17. The decision of the First-tier Tribunal is set aside.
18. There is an order for anonymity.
19. I re-make the decision in the appeal as follows: the appeal is allowed on protection grounds.

A handwritten signature in black ink, appearing to read 'CBE', is written in a cursive style.

Upper Tribunal Judge Bruce  
Date 3<sup>rd</sup> March 2020