



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002429
First-tier Tribunal No:
PA/51407/2022
IA/04787/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SAA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr. A. Pipe, Counsel instructed by TRP Solicitors
For the respondent: Mrs. R. Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 19 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By way of a decision issued on 28 September 2023 I set aside the decision of the First-tier Tribunal to be remade.
2. The appeal then came before me on 12 December 2023. At this hearing the parties consented to the disposal of the appeal pursuant to rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 on the basis that the appellant's appeal be allowed on Article 3 grounds. Following this, an application was made under rule 43 application by the appellant to set aside the decision dated 15 December 2023 for reasons set out in that application. In summary, the appellant said that she would not have agreed to dispose of the appeal in the absence of a determination of her protection status had she realised that the grant of leave would be 30 months leave as opposed to five years, such that she was prejudiced by consenting to a grant on this basis.
3. The appellant and her sister attended the hearing. I heard further brief submissions from Mr. Pipe on the rule 43 application. Mrs. Arif agreed that the decision should be set aside for procedural error and did not challenge the appellant's application. Taking the application and submissions into account, and in accordance with rules 2 and 5 of the 2008 Rules, I set aside the decision dated 15 December 2023.
4. I then heard submissions on the appellant's appeal on asylum grounds. I reserved my decision. It was confirmed by Mrs. Arif that the respondent's concession that the appeal should be allowed on Article 3 medical grounds remained. In relation to the appellant's protection claim the respondent continued to rely on his decision dated 23 March 2022, and the review dated 20 February 2023.
5. I have taken into account the documents in the bundle prepared for the remaking (905 pages).

Basis of the appellant's claim

6. The appellant appeals on the basis that she would be at risk of persecution from Al-Shabaab, and/or that she would be at risk of persecution by reason of her gender and/or minority clanship and/or mental ill health. These are reasons which engage the Refugee Convention.
7. I have had regard to the conditions set out in paragraph 339L of HC395 when assessing the credibility of the appellant's evidence. I have also applied the Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, when assessing the evidence given her poor mental health.
8. The standard of proof is to a reasonable degree of likelihood. This standard applies to both past and current circumstances, and also to establishing the future risk in the country to which she will be returned.

Decision and reasons

9. Following the case of Devaseelan, my starting point must be the previous decision of the First-tier Tribunal promulgated on 31 October 2016. I find that over seven years have passed since this decision. I have new evidence before me which was not before the Tribunal on that occasion. I have new expert reports relating to the appellant's clan membership and events in Somalia. I have new expert psychiatric reports. I have evidence of her siblings' clan membership. I also have evidence relating to the murder of the appellant's brother in Somalia. I find that this evidence enables me to depart from the previous findings of the Tribunal.
10. I attach no weight to the fact that the appellant did not give oral evidence bearing in mind the evidence of her mental health, which is accepted by the respondent.
11. The appellant has provided expert evidence in the form of reports from Dr. Joseph Mullen and Dr. Markus Hoehne. Dr. Mullen's report is dated 7 March 2022 (pages 101 to 119). Dr. Hoehne's report is dated 30 November 2022 (page 54 to 99), with an addendum note dated 6 December 2023 (page 100). He had seen, and commented on, the report of Dr. Mullen. There was no objection taken to the expertise or qualifications of the authors of these reports by Mrs. Arif at the hearing. In the review the respondent accepted that both experts had "substantial expertise and credentials of Somali culture, history and politics" (page 700). Their reports are detailed with sources cited. They are aware of their duty to the court. I find that I can rely on their evidence.

Clan membership

12. I find that the appellant has shown that she is a member of the Geledi clan. Mrs. Arif submitted that the expert reports did not go into depth regarding how the appellant was a member of the Geledi clan, but I find that this criticism is not made out.
13. I find that Dr. Mullen set out an overview of the Geledi clan, and then stated that he would "revisit the responses of the [appellant] in view of their compatibility with this profile" ([14] of his report, page 104). I find that Dr. Mullen looked at the answers given by the appellant at her asylum interview. He was not making his assessment on the basis of information given later by the appellant in an attempt to alter or embellish the evidence given at the first opportunity. At [16] he stated that a singular feature of the Geledi was their use of language Af-May, correctly described by the appellant, and attributed to the Geledi. "As this fact is not widely known among modern Somali's, I would suggest that it is a significant identifier in her claim to be Somali" (page 105). He stated that she provided "correct geographical knowledge of the Afgoye area" and information which would clearly identify her as Geledi.
14. In his report Dr. Hoehne refers to a 30 minute interview which he carried out with the appellant ([38], page 71). At [40] he states:

"Second, and very importantly, what [the appellant] mentioned about her genealogy and the divisions of the sub-group Odayweyne is indeed in accordance with what Virginia [Luling] has mentioned in an article that normally is only read by 'hard-core' Somalia specialists, and which certainly is not in the public domain.[....]"

I wish to emphasise that this genealogical knowledge, which [the appellant] exhibited in the telephone interview with me and which matches with what Dr. Luling has written in an academic text, published in 2010, is so specific that hardly anyone would have it, except an ethnographer of Afgoye (like Luling) or a member of a local group. This lends, in my view, a considerable amount of plausibility to [the appellant's] statements in this regard during our conversation (since, as it is safe to argue in my view, she has not read Dr Luling's article which is nowhere in the public domain outside of specialised libraries)."

15. He states that this, along with the appellant's dialect, and what she said about her upbringing means that in his opinion it is "very likely" that the appellant is a member of the Geledi clan.
16. In his addendum note he stated that he had interviewed the appellant over Zoom.

"In my email correspondence with [the appellant's] Solicitor following that appointment, I noted that [the appellant] was visibly lighter skinned and stated that this was in accordance with her claimed clan-belonging (Geledi). This observation was not included in the report that I subsequently prepared.

I should also add that [the appellant] also spoke with a "heavy" southern Somali (Af Reer Konfureed) and seemed to know some Af May, another southern dialect; and that her spoken language was consistent not only with her claimed home area but also with her claim to be Geledi."

17. I find that I can rely on the evidence of Dr. Mullen and Dr. Hoehne. I find that this evidence corroborates the appellant's claim to be from the Geledi clan. She has also provided DNA evidence which shows that she is related to her sister MAA, and her brother YAO. YAO is married to YH, who was granted asylum on the basis of his clan membership. As observed by Dr. Hoehne, the appellant said that Geledi usually marry among themselves, which he confirmed "their marriage pattern is endogamic". Mrs. Arif did not challenge this evidence in her submissions. I find that it is further evidence of the appellant's Geledi clan membership.
18. The skeleton argument at [18(ii)] makes reference to other objective material which was not before the previous Tribunal. It states:

"None of SAA's evidence in relation to her clan, was placed (by those acting for her) in any sort of context, notwithstanding the significance of some of the detail provided. For example, at interview SAA stated, upon questioning as to her clan's traditions (at Q81) that "This was part of our place, Istuun." In an academic piece dating back to 1983 Virginia Luling referred to the tradition of "Istun" as being a stick fight which took place on Afgoye".
19. The source cited refers to the "famous stick fight". It is the same expert as cited by both Dr. Mullen and Dr. Hoehne. It was submitted that it was therefore incorrect to state that the appellant had not provided any, or any accurate, information. I attach weight to this submission. Taking all of the above into account, I find that the appellant has shown that she is of the minority Geledi clan. I find that this goes to the overall credibility of her account, as this positive finding on a fundamental matter relating to the appellant puts into doubt the previous finding that her account lacked credibility.

Detention by Al-Shabaab

20. In the previous appeal the Judge found the appellant's claim to have been apprehended and detained by Al-Shabaab to be inherently implausible. In the skeleton argument at [21] it is submitted that this was "in line with R's uncontested evidence [that] Al Shabaab were not in control of Afgoye and were stated to have had no influence in the town". There was no expert evidence on this point before the Judge on that occasion.

21. The reports of Dr. Mullen and Dr. Hoehne address this issue. Dr. Mullen states at [26] (page 108):

"A particular feature affecting the security of Afgoye was the fact that all the Southern villages going into Lower Shabbele were effectively occupied by AS. Villages in the vicinity of Afgoye, such as Balcad, Janale, Beled Amen and Qoryoley remained under the control of AS. As the operation became a retreat from Mogadishu on the part of AS, large quantities of equipment and arms were moved out of Mogadishu to the Afgoye surrounding areas, to await re-entry into active service."

22. At [31] he states (page 109):

"In summary, Al Shabaab were present in Afgoye at the time of the events that form the basis of the Applicant's asylum claim. It is indeed plausible that she was detained by Al Shabaab during this period."

23. Dr. Hoehne states at [31] (page 66):

"Throughout the second half of 2015 and in early 2016 Al Shabaab was very active in and around Afgoye, as reported by various Somali media reports collected and translated by the BBC Monitoring International Service."

24. He concludes at [32] and [33] (pages 69 and 70):

"I confirm that Al Shabaab was operating in and around Afgoye in late 2015 and early 2016, and it conducted many attacks in the city in the second half of 2015 and even captured the town briefly in mid-February 2016. The extremist group clearly had to have a network of supporters and clandestine operatives in Afgoye to be able to conduct the above mentioned operations in town."

This means, in my view, that it is entirely plausible that Al Shabaab could detain civilians and take them out of town - as a form of recruitment. Thus, the detention of [the appellant] could be explained. It is not the position, as suggested by the First Tier Tribunal, that Al-Shabaab had simply withdrawn from Afgoye and that [the appellant's] account could not therefore be true."

25. There were no submissions made by Mrs. Arif on this point to counter this evidence. I have found above that I can rely on the expert evidence before me, and I place weight on this evidence. I find that it shows that Al Shabaab were in Afgoye when the appellant claims that she was detained by them. I find that I can depart from the previous findings which were based on a finding that Al Shabaab were not present in Afgoye.

26. In relation to the appellant being taken, the skeleton argument cites the respondent's CPIN Somalia: Al Shabaab, November 2020 which states at [5.3.1] and [5.3.2]:

“5.3.1 In an August 2017 paper by UNSOM, based on ‘a total of nine focus groups and three individual interviews [...] conducted over the course of 2016’100 (see pages 5 to 6 for details of the groups) concluded that ‘[w]omen are often recruited, because they may attract less attention than men and can thus more easily carry out suicide explosions. Women may also be used to entice male recruits’.

5.3.2 The DIS 2017 report noted: ‘Women are mostly recruited to al-Shabaab for logistical tasks, housekeeping, sexual exploitation, as mobilisers of other women, and as wives to al Shabaab fighters. In some cases, women are also recruited in order to collect information as women travel more easily disguised than men... None of the sources knew of female al-Shabaab fighters’.

27. I have considered the appellant's account. She made corrections to her asylum interview in her statement dated 23 May 2023. I find that this adds to the credibility of her account as there was no reason for her to do this. These are not matters which were taken up by the Judge in 2016. The fact that she has sought to clarify her account in the statement produced for the First-tier Tribunal appeal of her fresh submissions, on matters not directly addressed in 2016, strengthens her credibility.
28. In her witness statement dated 23 May 2023 at [13] she said that she was approached by some men when she was in the market (page 16). She said that there were two or three. They said that they wanted to speak to her and asked her to go with them. She asked what they wanted, but they just said that she should follow them. She was then put into a vehicle.
29. At [15] of this statement she said that it was a small van with other women inside. It was a dark van, with dark windows. She was driven for between 30 minutes and an hour. She was then placed inside a cell in a building. At [16] she said:
- “I was left there in the cell on my own for a few hours before 2 men came to me. They read some verses of the Qu’ran and then they talked to the about my religion; they said that as a Muslim it was my duty to protect and fight for my religion. I did not respond and they left. I should explain, at this point, that I was not asked by them to go on any suicide missions. This is what I understood them to mean when they told me that I must be prepared to fight for my religion. Women did not become involved in other ways of fighting; the only thing a woman could do would be to sacrifice herself; but they did not tell me about any particular places that I needed to go and they did not talk specifically about bombs or explosives.”
30. The appellant has not claimed that she was specifically targeted. Her account is plausible taking into account the expert evidence and the evidence in the respondent's CPIN regarding women being taken. Taking all of the above into account, I find it is reasonably likely that the appellant's account is true. I find that she was apprehended and detained by Al Shabaab as claimed. I find that she was helped to escape from detention as described in her witness statement, being helped by a man to leave when the men were praying.

Risk on return

31. I have found above that it is reasonably likely that the appellant's account is true. I find that she is of the minority Geledi clan. I find that she was taken by Al Shabaab from the market in her home town of Afgoye. I find that she escaped from their detention.
32. I have considered whether there is a risk on return to Afgoye. In the decision the respondent considered whether there would be a risk on return to Mogadishu [40]. However, as submitted in the skeleton argument, I find that this is not the correct approach. The appellant is from Afgoye. Therefore the first consideration is whether she can return there. Mogadishu can only be considered in the context of internal relocation. She would not be "returning to Mogadishu after a period of absence" as asserted by the respondent as she is not from Mogadishu.
33. Mrs. Arif made no submissions as to the position of the appellant returning to Afgoye, or the risk from Al Shabaab in Afgoye. She submitted only that the appellant could internally relocate and that it would not be unduly harsh for her to do so.
34. I have considered the report of Dr. Hoehne. He quotes from the Danish Country Information Service report from July 2020 at [12] of his report which states (page 59):

"Despite its territorial loss since 2011, the organisation retains control over significant parts of South and Central Somalia and regularly takes over major towns and conducts attacks on civilian and military targets in Mogadishu and across the border in Kenya. Al-Shabaab has an extensive network of informants through whom the organisation gathers very detailed information and instils fear amongst the local population. Also, the organisation runs large and effective training facilities and remains mobile and well organised. [...] Al-Shabaab has presence in government controlled areas and has free rein to move and operate. The organisation is also considered to have infiltrated several governmental institutions and sectors, including police, SNA [Somali National Army], and Federal Ministries. The size of al-Shabaab is unknown but the organisation is estimated to have 5,000 - 10,000 members and control roughly 20 per cent of Somalia."
35. He also cites an article from the Washington Post from July 2022, and concludes at [27] that "Al Shabaab is a very potent force in south and central Somalia". At [30] he states:

"Moreover, [the appellant] has claimed that she escaped Al Shabaab recruitment in 2016. If, upon return to Somalia, she would be identified as someone who rejected Al Shabaab's orders, which is clearly possible, given the clandestine network of the extremist forces in Mogadishu, she certainly would be in great danger of being punished harshly for her disobedience."
36. Dr. Mullen's assessment of the risk from Al Shabaab is the same as that of Dr. Hoehne. He concludes that the appellant would be at risk on account of having escaped from them ([23] of his report, page 107).
37. I find, in reliance on the expert evidence, that the appellant would not be able to return to her home area of Afgoye due to the risk from Al Shabaab. Given the reach and power of Al Shabaab there would no sufficiency of protection from the authorities.

38. In relation to the risk to the appellant from Al Shabaab in Mogadishu, the respondent's evidence in the form of the CPIN Somalia: Al Shabaab, November 2020 states at [6.6.3]:

"Al-Shabaab defectors are... considered a prime target for al-Shabaab, as they are regarded as having sensitive information about al-Shabaab...When asked if a defector could relocate safely to urban centres with AMISOM presence, for instance to Mogadishu, several sources pointed out that alShabaab has informants everywhere, including in Mogadishu, and would be able to find a defector."

39. I find that the appellant would be at risk from Al Shabaab in Mogadishu, so could not relocate there. Further, I find that it would not be reasonable to expect her to relocate to Mogadishu. I have considered the reasons given by the respondent in his decision for why the appellant could "return", although she would not be "returning" but "relocating", to Mogadishu. I bear in mind that the respondent has accepted since his decision that the appellant would be at risk in Somalia on Article 3 medical grounds due to her poor mental health. This is clearly a significant factor to be taken into account when considering whether internal relocation would be reasonable.
40. At [44] of his decision the respondent considered that the appellant had not made serious efforts to trace her husband's whereabouts and stated at [45] that it was therefore not accepted that she would be "returned as a single woman with no family or close relatives" as she had not provided sufficient evidence to show that she could not seek the support of her husband. The respondent has accepted that the appellant would be at risk of treatment contrary to Article 3 on account of her mental health. I find that it is very unlikely that such a concession would have been made if the respondent considered that the appellant would have support from her husband, including support to access services.
41. Notwithstanding that, as I have no specific concessions regarding her husband, I have considered the appellant's evidence of her family and their whereabouts. I find that her mother and brother are in Yemen. This follows the murder of her brother by a policeman, and his subsequent execution for the crime. Given my findings above that the appellant is at risk irrespective of what happened to her brother, I do not need to consider this in further detail. The appellant has provided corroborative evidence which has been assessed by Dr. Hoehne. The relevant evidence for my consideration in this respect is the fact that her family have left Somalia as a result and fled to Yemen. The appellant provided the Refugee Identity cards from Yemen for her mother and her brother Z's three children, who the appellant brought up as her own owing to his poor mental health. The cards for the children, together with translations, are found at pages 207 to 212. The card for her mother is at pages 213 and 214. I agree with the submission made in the skeleton argument that the children would likely be with the appellant's husband if his whereabouts were known.
42. The appellant's evidence is that she has not had contact with her husband since she was apprehended by Al Shabaab, which was in 2016. This is the same as the evidence of her sister ([5] of her witness statement dated 20 May 2023, page 32). Her sister's evidence is that neither she nor the appellant speak to anyone in Somalia now. I accept this evidence, and find that the appellant would not be supported in Mogadishu by any family members. I find that her husband's whereabouts are unknown, and the rest of her family are either in Yemen or the United Kingdom.

43. I find that the appellant would not have any clan support in Mogadishu. I have found that she is a member of the Geledi clan, a minority clan. MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) states at [407(f)]:

“Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.”

44. In relation to remittances from abroad, this support was referred to at [47] of the respondent’s decision. However, I find that the respondent did not consider this support to be sufficient to protect the appellant from a risk of treatment contrary to Article 3 on medical grounds. The appellant’s sister’s evidence is that she could not provide sufficient or permanent financial support to the appellant in Somalia ([4] of her witness statement dated 20 May 2023, page 32).

45. I find that the appellant’s mental health is such that, were she to be returned to Somalia, it would deteriorate and she would be unlikely to maintain contact with family members in the United Kingdom in any event. I have taken into account the evidence of Dr. Bell. He provided two expert psychiatric reports, the first dated 12 December 2022 (pages 132 to 148) and the second dated 6 December 2023 (pages 120 to 131). He has set out his expertise and experience at the start of his reports. He has provided reports for many immigration and asylum cases and is aware of his duty to the court. He had access to all of the relevant documents and interviewed the appellant in order to produce each report. There was no challenge to these reports from Mrs. Arif and I find that I can rely on them.

46. In relation to the appellant’s ability to maintain contact with family members in the United Kingdom were she to be returned to Somalia, Dr. Bell states:

“It may be thought that electronic contact whilst in Somalia would provide such support to mitigate any deterioration in [the appellant’s] psychiatric state. However this is not, in my view, a sustainable suggestion. Firstly even the move to Nottingham where she was in reach of her family but was largely restricted to telephone contact resulted in a serious deterioration. The effect upon her of being in another country, with no realistic prospect of in-person contact, would clearly be very much worse. Secondly it is my view that she would be in such a deteriorated state that she would be very unlikely to be able to make use of this mode of communication. It is for that same reason that, in my view, even were financial support forthcoming from the United Kingdom, she would not be in a position to reliably navigate receipt of it. Thirdly such communication, if possible, is likely to be too painful a reminder of the loss of in person contact and for this reason may be avoided.”

47. I find, in reliance on the evidence of Dr. Bell, that the appellant would be unable to avail herself of financial support from family in the United Kingdom due to her mental health, even if her family were able to provide sufficient support. I find that the appellant would not be able to find employment due to the deterioration in her mental health.

48. I find that the appellant’s gender would make her more vulnerable. I have taken into account the UNHCR Report entitled International Protection Considerations with Regard to People Fleeing Somalia, September 2022 (pages 243 to 324). This states under the heading “Women and Girls” (page 297):

“Women continue to face serious challenges to the full enjoyment of their economic, social, political and cultural rights. Discrimination against women is pervasive in Somali society. According to the Independent Expert on human rights in Somalia, “the situation of women in Somalia has been characterized by systemic violence.”

49. Later it states that displaced women and girls are particularly vulnerable to gender based violence, “as are women from minority clans” (page 299).
50. Taking all of the above into account, I find that it would be unduly harsh to expect the appellant to internally relocate to Mogadishu. She would be returning to Somalia as a lone female from a minority clan with very poor mental health. She would have no support in Somalia either from family members or from her clan. She has been absent from Somalia for eight years and has no support network there. I find that internal relocation would be unreasonable.

Conclusions in relation to refugee protection

51. Considering all the above, I find the appellant’s claim to be a genuine refugee in need of international protection to be well founded. I find that there is a real risk that she will suffer persecution on return to Somalia and so her claim succeeds on asylum grounds.
52. As I have allowed her claim on asylum grounds I do not need to consider her claim to humanitarian protection.
53. The respondent has already accepted that returning the appellant to Somalia would cause the United Kingdom to be in breach of its obligations under Article 3 of the ECHR on medical grounds.

Notice of Decision

54. The appellant’s appeal is allowed on asylum grounds.

K. Chamberlain
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
2 April 2024