



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00538/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 11 June 2013 and 8th July 2013**

Determination Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MS A A D
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Toal instructed by Wilson Solicitors LLP
For the Respondent: Ms S Vidyadharan, Home Office Presenting Officer (11th June 2012)
Ms J Isherwood, Home Office Presenting Officer (15th July 2013)

DETERMINATION AND REASONS

1. The appellant is a citizen of Somalia, born on 29 October 1989 and she appealed against the decision of the respondent dated 4 January 2013 to remove her from the UK following a refusal to grant her asylum, humanitarian protection and protection under the European Convention.

2. The appellant claimed asylum on the basis of her fear of the general state of unrest in Somalia and in particular her fear of Al-Shabaab. In her asylum claim the appellant gave two varying accounts. The first that she lived in Bakara district of Mogadishu and Somalia until the age of 2, and between 1991 and 2011 she lived with her grandmother as a nomad on the outskirts of Mogadishu. She returned to the Bakara district to live with her mother in 2011 until she left. She claimed to belong to the Bandhabow clan, Bahar Sufi sub-clan and the Amned Nur sub-sub-clan. The substance of her claim was that she was abducted and raped by Al-Shabaab in October 2011. She claimed she stayed in Mogadishu for several months after the incident and left Somalia at the beginning of 2012. She claimed her parent and siblings had now moved to a place between Mogadishu and Afgoye due to the general country situation.
3. By the time of her appeal hearing the appellant stated that she was a Somali citizen who was born in Afgoye and that she was a member of the Bandhabow clan which was a sub-clan of the Reer Hamar clan. She stated that she had been untruthful in her original claim but had been confused, scared and distressed at the interview.
4. She stated that when she was aged 2 she went to stay with her grandmother in Ethiopia and they had never been back to Somalia. They left in 1991 and she described living in terrible conditions in Ethiopia. The appellant claims it was Ibrahim, her grandmother's explanation-husband's brother who paid for her to leave Somalia. The appellant referred to her family members including her mother and father, three sisters and five brothers. All but one of the family members are believed to live in Mogadishu. That was the position in 2010.
5. Judge Brown of the First-tier Tribunal dismissed the appellant's claim on asylum grounds, humanitarian protection grounds and human rights grounds. He referred to **AMM & Others (conflict - humanitarian crisis - returnees FGM) Somalia CG [2011] UKUT 00445** and **SG (Iraq) [2012] EWCA Civ 940**.
6. At paragraph 28 of his determination the judge identified that it had been submitted that withdrawal of Al-Shabaab from Mogadishu rendered it safe to remove those to Somalia and this was detailed in the refusal letter.
7. He noted paragraph 350 of **AMM** where it stated that
"at the present time an Article 15(c) risk exists as a general matter in respect of the majority of those in Mogadishu and, as a general matter as to those returning from the UK".
8. At paragraph 30 of his determination the judge found that the appellant's original account was untrue and deceitful and found that if she left Somalia at an early age she had not suffered persecution or harm. Further, the appellant if her later account was true, had many remaining members in Mogadishu as set out in her statement.
9. The judge found that she was Somali because she spoke the Somali language and considered that she had lived in Ethiopia for a long period. He also accepted at paragraph 32 that the appellant's clan background was that she was from the

Bandhabow clan that was part of Reer Hamar. He determined that the appellant would be removed to Mogadishu and he considered her claim on that basis. Nonetheless the judge dismissed her claim, finding that her parents and siblings lived in a place called Water Wells between Mogadishu and Afgoye. He came to the conclusion that the appellant's family were likely to be living close to Mogadishu and had lived in the area in very turbulent times.

Permission to appeal

10. An application for permission to appeal was made on the basis that there had been little by way of findings to support the notion that there had been durable change and it was safe to return people to Mogadishu. All that the Tribunal had stated by way of explaining that there had been a durable change of circumstances since the decision in AMM was to be found at paragraphs 34 and 35 and a quote from a BBC on-line report.
11. The Tribunal's reasoning did not establish the existence of very strong grounds supported by cogent evidence justifying the departure from AMM and the reasoning was therefore inadequate.
12. The fact of Al-Shabaab's withdrawal from Mogadishu in August 2011 was known to the Tribunal in AMM (Somalia) and its consequences were considered by the Tribunal in great detail.
13. The sources of Article 15(c) risk identified by the Tribunal in AMM were Al-Shabaab's resort to asymmetric warfare following its withdrawal from Mogadishu and the Tribunal needed to rely on cogent evidence that those forces of risk had disappeared or materially and sufficiently diminished.
14. The Tribunal relied on the reports referred to in the Secretary of State's refusal letter which identified many positive improvements in the security and humanitarian protection situation in Mogadishu. These reports were relied on to support this submission but only one of the reports quoted in the refusal letters specifically addressed the risks identified in AMM and that was the report in the Somali Bulletin dated 17 August 2012. This, however, identified that the Somali capital still encountered terrorism mode.
15. In the light of that evidence and the absence of other evidence quoted in the reasons for refusal letter, it could not be treated as cogent evidence that there had been durable change in the security situation.
16. The FCO Report of Al-Shabaab withdrawal of international support was that *"ultimately this should create the space for improved governance standards and greater protection of human rights"*.
17. Permission to appeal was granted by First-tier Tribunal Judge Hemingway on the basis that the judge had erred with respect to consideration of the appeal under

Article 15(c) of the Qualification Directive in failing to give adequate reasons for departing from the relevant country guidance being AMM.

Conclusions regarding the Error of Law

18. At the hearing Mr Toal confirmed that his challenge was confined to Article 15(c) and the humanitarian protection of the appellant rather than a claim with respect to asylum or under the Human Rights Act. I have therefore considered this aspect of the claim only.
19. In his determination [27] the judge correctly referred to SG (Iraq) which established at paragraph 47 that "Tribunal Judges are required to take country guidance determinations into account and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so".
20. The country guidance for Somalia is at present and was at the time of the determination AMM. AMM reviewed 1,266 pieces of evidence, an index of which is annexed at the end of AMM. The fact of Al-Shabaab's departure *was* considered by AMM and this is referred to at paragraph 3 of AMM. Paragraph 342 refers to the withdrawal of Al-Shabaab and there are references to the evidence, for example at paragraph 286 that the likelihood was that Al-Shabaab would "employ asymmetrical, hit and run terrorist tactics, such as suicide bombings". Paragraph 313 refers to the fact that civil war had entered a new phase in Mogadishu and at paragraph 340 of AMM that there "remained places where civilians could properly be said to run Article 15(c) risks both from the asymmetrical warfare which Al-Shabaab was even then tending to use in those areas but also from undisciplined elements of the TFG's forces.
21. AMM stated at 350, and indeed the judge quoted this, that at the present time an Article 15(c) risk existed in respect of the majority of those in Mogadishu.
22. However AMM identified that there would be certain exceptions and these were identified at paragraph 357 such as:

"a category of middle class or professional persons in Mogadishu who can live to a reasonable standard, in circumstances where the Article 15(c), which exists for the great majority of the population, does not apply. A returnee from the United Kingdom to such a milieu would not, therefore, run an Article 15(c) risk, even if forcibly returned. Into this category we place those who by reason of their connection with "powerful actors such as the TFG/AMISOM, will be able to avoid the generalised risk".
23. Indeed, at paragraph 358 the Tribunal confirmed that the significance of that category should not be overstated and "*for most people in Mogadishu the Article 15(c) risk persists at the present time*" and further "*in the case of a claimant for international protection, a fact-finder would need to be satisfied that there were cogent grounds for finding that the claimant fell within such a category*".

24. The judge at the First-tier Tribunal determined that the situation in Mogadishu had improved to the extent that he could depart from AMM and this I find to be an error of law for these reasons.
25. First he stated at paragraph 34 that the refusal letter mentioned improvements in the situation in Somalia since the decision in AMM. However, it was confirmed that the full reports of which extracts were identified in the Reasons for Refusal Letter were not submitted to the First-tier Tribunal and thus could not be judged in the overall context of the full report. I find this to be an error. I can understand that the respondent would wish to outline the improved situation within Mogadishu but I do consider that the full reports should have been submitted in support of the evidence and to ensure that a balanced view of the extracts could be discerned. Relying on extracts alone cannot be reliable evidence with which to support cogent findings.
26. Ms Vidyadharan valiantly took me through the reports and the Reasons for Refusal Letter but I note that many of the assertions of improvement in the security situation were in fact qualified and I note that the British Diplomatic Mission has located itself in the airport compound.
27. Further, as Mr Toal pointed out, the Somalia Bulletin which was quoted stated that the allied forces were gaining military influence in an increasingly larger part of south Somalia but the same report also indicated at paragraph 45 of the Reasons for Refusal Letter identified that "*the Somali capital is still in counter terrorism mode*".
28. Further the Reasons for Refusal Letter on which the judge placed his view that he could depart from AMM and that there was a durable change, resulted from the Foreign and Commonwealth Office Human Rights and Democracy 2011 Report. This report stated "the security landscape of Somalia was changing rapidly" but even this report stated "*ultimately this should create the space for improved governance, standards and greater protection of human rights*".
29. A further Report on the International Institute of Strategic Studies Armed Conflict Database dated 2011 referred to the Al-Shabaab having *partially* pulled out from Mogadishu and a reference to the *temporarily* weakened Al-Shabaab.
30. These reports when analysed thoroughly did not constitute strong grounds supported by cogent evidence and indeed the references to the reports at paragraphs 46, 47 and 48 of the refusal letter were reports which had already been considered by AMM when it came to the conclusion that the majority of those returned to Mogadishu would be in need of humanitarian protection.
31. The judge also made a reference at paragraph 34 to a BBC on-line report that Al-Shabaab had withdrawn from Mogadishu in August 2011 and also the key town of Afgoye in May 2012. Mr Toal confirmed that this was not a report submitted by the appellant's representatives and indeed the Home Office Presenting Officer was not aware of a report being submitted.

32. It is not clear that this was evidence submitted by either party but in any event I find that the conclusions by the judge at paragraph 36 that there had been a durable change of circumstances since AMM could not be supported by adequate reasoning or in the identification of reports to support the concept of durable change.
33. As such, I find that there is an error by the judge in departing from the country guidance and that the decision should be remade only in respect of the assessment of 15(c) risk to the appellant should she return to Somalia.
34. At the error of law hearing Ms Vidyadharan attempted to submit documentation to which Mr Toal objected. As directions had not been issued for a substantive hearing the matter was adjourned to 15th July 2012 in order to allow time for further documentation to be adduced by the Secretary of State.

The substantive hearing

35. At the hearing on 15th July 2013 Ms Isherwood attempted to submit 3 further documents. This was a Somali Bulletin dated May 2013, a Landinfo update dated October 2012 and Danish Immigration Report dated January 2013. Mr Toal objected to their production. Bearing in mind that there had been an adjournment specifically for the production of further evidence I refused to admit lengthy documents at such a late stage. The second and third documents had been superseded by further information submitted for example by a Landinfo report dated May 2013 and which was before me.
36. Mr Toal made submissions that there had been no durable change since AMM. The Landinfo report of May 2013 indicated asymmetrical warfare, hit and run attacks and assassinations and violence from militia groups. This was the position before AMM. The report indicated that violence went up and down and there had been an increased number of sexual based assaults. In addition the government forces were a source of risk. Further the Amnesty International report indicated the fragility of the situation. There were no cogent reasons for departing from the country guidance or finding that the appellant was in the exempted category referred to in paragraph 357 of AMM.
37. Mr Toal asserted that at paragraph 31 of the determination the judge accepted some of the appellant's account. When civil war broke out she could not return and she had no experience of living in Somalia or Mogadishu. She had lived, according to her witness statement, in harsh conditions in Ethiopia and yet had chosen not to return to Somalia. If she had belonged to a group affording her protection she could and would have returned to Somalia. Paragraph 35 of the determination indicated that her parents and siblings lived in Mogadishu but there was no evidence that they belonged to the middle classes. Her mother sold tomatoes and the father did not work. Her parents lived in the Afgoye corridor which was the location of many refugees. In other words the family had been internally displaced. AMM had indicated that those in the Afgoye corridor were at risk. The judge accepted the evidence that the family moved because of war and her evidence was consistent with the time that there was mass displacement. Further the judge found that she

belonged to a minority clan. The Amnesty International report indicated that minority clans remained at risk and were discriminated against.

38. Ms Isherwood submitted that the judge had found the appellant deceitful and her account untrue. It was accepted that she had been living in Ethiopia. Her family had, however, remained in Mogadishu. This was a female with family who had remained in Mogadishu and who had not been found to be truthful. She was a Somali national but the rest of her account was found to be untruthful. The Amnesty Report indicated that the situation was improving. The Human Rights Watch report dated 31st January 2013 at Page 46 of the appellant's bundle showed the situation was moving forward and it was acknowledged that things needed improvement but the problems were being addressed. Although abuse of females was an issue this was someone with family. The Landinfo report was evidence that Al Shabaab were weakening. Targeted attacks were reducing. The government were addressing concerns. Page 31 of the report indicated that the appellant was not at risk from being from a minority clan. People were able to move about. Her family had been able to remain in Mogadishu and she would be returning to a large family. The reports indicated durable change.
39. Mr Toal responded that the fact that the family remained in Mogadishu did not confirm that the appellant was part of the exempt category. Paragraphs 346 to 350 of AMM identified that the risk was because of the nature and pattern of violence and this had improved but the improvement in the security situation was not sufficiently durable.

Conclusions

40. I preserved the findings of the previous determination save for the assessment in relation to Humanitarian Protection. The appellant was found not to be credible and the question at hand was whether a woman, who had been found not to be a credible witness, was a Somali national who had lived in Ethiopia for much of her life and was a member of a minority clan, could be safely returned to Somalia. The judge appeared to accept in his determination [33] that the family lived in the Afgoye corridor.
41. The respondent maintained that the appellant as a woman could be safely returned.
42. The question is what is the effect of the adverse credibility finding against the appellant? AMM gave guidance on this and stated that the significance or negative pull of the lie would depend not only on the strength of the background evidence but on whether the lie was about an issue that was central to the disposition of the appeal. It was open to the Tribunal to approach with such caution the person's evidence regarding matters that are central to the current claim.
43. I refer to AMM 568 which addressed MA (Somalia) v Secretary of State for the Home Department and the question of the extent to which an appellant who has been found to have told lies, should have that finding held against him in determining entitlement to international protection. The first task is to decide, on the

evidence and circumstances other than the evidence given by the individual concerned, what the likelihood of him being without sufficient protection if returned to Somalia and secondly it should be considered whether the particular evidence establishes a reasonable possibility that he or she has no protection on return to Somalia.

44. The question is whether the lies have an impact on the humanitarian protection by virtue of the findings regarding the socioeconomic position and connections of the appellant. The appellant's claim was disbelieved in relation to her rape and abuse and the hands of the Al Shabaab but she stated that she had lived in Ethiopia for most of her life and was in contact with her family in Somalia. I do not find that the lies in this instance show a cogent reason for finding that she was connected to powerful actors or was otherwise exempted from the category of those requiring humanitarian protection. I accept that the appellant's family are living in the Afgoye corridor which would indicate that they are probably amongst the internally displaced. I do not find that the appellant, on the account which was accepted, is anything other from a family of modest means who appeared to have been displaced.
45. In relation to Article 15(c), AMM (Somalia) CG [2011] UKUT 00445 gave clear guidance as to the proper approach to the assessment of the Article 15(c) risk to returnees to Mogadishu and concluded that such a risk existed for the great majority of returnees. At paragraph 357, and which is cited above, the Tribunal acknowledged that there was a category of middle class or professional people in Mogadishu who could live to a reasonable standard in the circumstances of their Article 15(c) risk which existed for the great majority of people did not apply but added at paragraph 358:
- "The significance of the category we have just identified relating to middle class professional and well connected people living in Mogadishu should not however be overstated. For most people in Mogadishu the Article 15(c) risk persists at the present time. In the case of the claimant for international protection, a fact finder would **need to be satisfied that there were cogent grounds for finding that the claimant fell within such a category.**"*
46. The appellant's particular personal circumstances are that he claimed she had lived in reduced circumstances in Ethiopia and in crowded and harsh conditions. She was also found to be a member of a minority clan and therefore there was absent a cogent ground for finding that she fell within the category of middle class or professional persons who can live to a reasonable standard or someone who has connection with "powerful actors". I note that at paragraph of the significance of the category identified was not to be overstated and that for most people in Mogadishu the Article 15(c) risk persisted at the present time.
47. I was invited to consider that the situation in Mogadishu had improved considerably such that I should no longer follow AMM.

48. **SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940** at para 47 states

'decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence are adduced justifying their not doing so'.

49. Nonetheless it is clear at paragraph 363 of **AMM** that in assessing cases judicial fact-finders must decide whether the evidence was the same or similar to that before the Tribunal when deciding **AMM** and to that extent are not required to have the findings as authoritative.

50. I therefore turn to a consideration of whether the facts before me are so different in relation to Mogadishu to enable me to depart from **AMM**.

51. The legal burden of proving a place is safe does not rest with the respondent, but at paragraph 345 the Tribunal in **AMM** confirmed that any assessment that material circumstances have changed will need to demonstrate that

'such changes are well established evidentially and durable'.

52. Much of the background information cited in the Reasons for Refusal Letter by the respondent was either material considered in **AMM**, which reviewed reports and evidence to 28th September 2011 or extracts from reports. The full reports identified in the reasons for refusal letter were not produced to me. Even within the extracts given in the reasons letter there were ambiguous statements. For example the Somalia Bulletin dated 17th August 2012 although used to assert that the situation had improved still referred to allied forces as only *'gaining military influence in an increasingly larger part of S-C Somalia'*.

53. The Foreign and Commonwealth Office report extract dated 30th June 2012 referred to *'working to deliver urgent stabilisation assistance in the newly-recovered areas'* and that *'ultimately this should create the space for improved governance standards and greater protection of human rights. I do not find that the statement at 4.3 of the reasons for refusal letter confirming durable change was substantiated by the extracts produced. Paragraph 45 of the letter referred to the Somalia-Bulletin 17/08/12 stated that 'the Somali capital is still in counter-terrorism mode, and kidnap, and ransom, improvised explosive devised and suicide bombers remain an everyday threat'.*

54. The reports identified at paragraphs 46, 47 and 48 of the reasons for refusal letter were cited in **AMM** but nonetheless appeared to be used by the respondent to demonstrate durable change.

55. I considered the situation in the light of further reports produced.

56. The Somalia Operational Guidance Note October 2012 recorded at 3.6.7 that the security situation was reported to remain volatile as at 1 May 2012 and the terrorist attacks from Al Shabaab remained constant. At 3.6.6 the report cited a Danish

Immigration Service fact finding mission in February 2012 which identified that Mogadishu was much safer environment in terms of civilian casualties. But at 3.6.10 the report stated that the number of injuries or loss of life resulting from unconventional warfare and insecurity remained very high. At 3.6.12 the security situation was cited as remaining unpredictable.

57. The Amnesty International public statement dated 15th May 2013 stated that

*“In the light of the above the organisation has no doubt that the security situation within south and central Somalia **including Mogadishu** remains extremely volatile. Lack of authority, discipline and control of government forces and its armed militias mean the government forces both fail to provide protection or security for its civilians and are themselves a source of insecurity.”*

And further

“In Mogadishu there is ongoing violence through both indiscriminate and targeted attacks. Al Shabaab though weakened retains influence and despite their diminished capacity is still able to carry out direct attack on civilians and indiscriminate attacks through suicide bombs, improvised explosive device (IED) and grenade attacks.

58. The Landinfo report dated 16th April to 17th May 2013 identified that in Mogadishu there continued to be underground Al-Shabaab cells and terrorism despite Al-Shabaab's partial combat withdrawal from Mogadishu in August 2011. Some security improvements were identified and Al Shabaab target specific groups, although I note groups which did not include the appellant. However there are still hand grenade attacks, improvised explosions and when staging a large scale attack Al-Shabaab *‘did not mind if civilians were killed’*. UNHCR Somalia stated that al Shabaab maintained its intent and capabilities in Mogadishu. Also identified were crimes committed by SNAF forces against civilians and an increase in sexually based crimes, although the report stated that *‘when things are normal people do not fear police or SNAF soldiers’*.
59. In relation to security based improvements in Mogadishu at 1.6 the Landinfo report explained that although *‘the security situation in Mogadishu steadily improves there is still a lot of uncertainty. The situation is not stable and it is not just serenity and peace in Mogadishu. The overall context in Somalia is still fragile, in spite of the security improvements and progresses that have been made since August 2011’*. Recent attacks, for example on the Supreme Court on 14th April 2013 were also highlighted.
60. With regard to the position on clan protection the Landinfo report stated that *‘clan protection is no longer an issue, as al-shabaab soldiers do not differentiate between clans, they kill indiscriminately. And people of the same clan do not trust each other either anymore so it is not enough to be affiliated by clan to someone to gain their trust or protection. This is a general development’*.
61. Overall, the information cited to show improvement in the security situation did not lead me to find the change was durable as identified by **AMM**. For the reasons given

above the appellant is not in an exempt category and the reports overall, do not demonstrate durable improvement in the security situation. I therefore find that the appellant is at risk in relation to an Article 15(c) risk should she return to Somalia.

62. There was no challenge in respect of the dismissal of Articles 3 and 8. I therefore allow the appeal on humanitarian protection grounds alone and I dismiss the appeal in relation to Articles 3 and Article 8.

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.

Signed

Date 6th August 2013

Deputy Upper Tribunal Judge Rimington