



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

THE IMMIGRATION ACTS

Heard at Birmingham
On: 5 December 2013

Decision Promulgated:

Before

Upper Tribunal Judge Pitt

Between

F I A
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Mozam of Immigration Advice Service

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

DETERMINATION AND REASONS

1. The appellant is a citizen of Somalia, born on 1 February 1990. He claims asylum on the basis that he is from Afgoye in Lower Shabelle

where there was a serious threat to him from Al-Shabab as he is from the minority Ashraf clan.

2. I continue the anonymity order made by the First-tier Tribunal in order to avoid the possibility of serious harm arising for the appellant or his relatives from the contents of this decision.
3. This is an appeal by the appellant against the determination dated 16 September 2013 of First-tier Tribunal Judge Sommerville refusing the appellant's appeal on asylum, human rights and humanitarian protection grounds.
4. The written grounds of appeal related only to the finding that the appellant was not from the minority Ashraf clan and the manner in which the First-tier Tribunal dealt with the evidence of the appellant's aunts and their immigration status.
5. It is not disputed that the First-tier Tribunal had before it country evidence indicating that members of the Ashraf clan from Lower Shabelle speak a particular dialect; see [27]. In the same paragraph the judge found that the appellant's failure to demonstrate that he spoke the appropriate dialect indicated that he was not from the Ashraf clan.
6. The appellant provided evidence from his maternal aunts in support of his claim to be Ashraf. They gave oral evidence, provided pages from their own screening interviews and their immigration status documents. They maintained that they had been accepted as Ashraf and granted refugee status even though they had spoken only Somali rather than a dialect thereof in their own asylum claims. The appellant's case was therefore that if his maternal aunts had been accepted to be from the Ashraf clan even though they spoke Somali, he should also be accepted to be Ashraf.
7. The evidence from the appellant's aunts that they had been accepted as Ashraf and granted refugee status even though they had only spoken Somali therefore had to be considered against the country evidence that members of the Ashraf clan from Lower Shabelle speak a particular dialect and the appellant had not shown that he did. The First-tier Tribunal judge undertook that consideration at [30] and was entitled to prefer the country evidence where he had little information as to the role played by the language spoken by the aunts in their own asylum claims. It is not suggested now that he had evidence other than from the aunts and the appellants in their evidence, that the aunts spoke only Somali in their asylum claims or how this issue featured in their cases.


8. In addition, the First-tier Tribunal judge was also provided with the appeal determination for the appellant's sister which found that she was not Ashraf. He referred to her incorrectly at [31] as the appellant's aunt. Nothing hangs on that error as, if anything, it makes the appellant's situation worse if an even closer relative, his sister, was found not to be Ashraf. Mr Mozam sought to argue that the determination of the sister's claim was flawed. That argument can have no basis in law where there is nothing to indicate that the sister's determination was ever challenged and the submissions he made about it were not put to the First-tier Tribunal. The determination of the sister's claim also cannot assist the appellant's credibility as her determination indicates at [28] that she stated that her mother was killed by USC militia in 2002 but the appellant stated that his mother died of natural causes in 2000; see [17] of the determination and [3] of the appellant's asylum witness statement.
9. Certainly, the First-tier Tribunal was incorrect to state at [30] that the appellant's aunts had been given status under the legacy policy rather than being recognised as refugees. In the absence of more detail on the role that the language they spoke in their own asylum claims featured and set against the evidence from the asylum claim of the appellant's sister it did not appear to me that the mistake as to the immigration status of the aunts was sufficiently material so as to amount to an error of law. Even if the judge had accepted that the aunts were refugees there remained the lack of detail as to the part played in their own appeals on which language they spoke and the serious difficulties arising from the asylum claim of the appellant's sister.
10. Mr Mozam also maintained that the First-tier Tribunal judge should have made a clear finding on whether the appellant was related to his aunts. A proper reading of [28] to [30] shows that he did accept that they were related as claimed.
11. Mr Mozam, seemingly taking his lead from the grant of permission to appeal which queried whether the First-tier Tribunal had taken a proper approach to the country evidence on Al-Shabab and the country situation generally, maintained that the First-tier Tribunal erred in its approach to the country evidence and whether it showed the appellant to be from the Ashraf clan.
12. The determination shows at [6], [25] and [33] and [26] that the First-tier Tribunal judge was referred to and considered the country evidence that was before him and assessed the appellant's evidence in relation to the country evidence. It is correct that the country

evidence showed that Al-Shabab carried out forced recruitment in areas which they controlled which included, for a time, Afgoye. That did not oblige the First-tier Tribunal to find the appellant's claim to be Ashraf to be credible, however, given the appellant's inability to show that he spoke an Ashraf dialect and conflicting evidence given by the appellant on the approaches made to him by Al-Shabab (see paragraph 18 of the refusal letter) and the difficulties raised by the determination of his sister's asylum claim.

13. The First-tier Tribunal was also correct to identify from the country evidence at [33] that Al-Shabab was losing control, the same point being made at 1.34 of the respondent's Country of Origin Information Report regarding Al-Shabab having lost control in the appellant's home town of Afgoye. The conclusion that there would no longer be a risk on return to Afgoye even for an Ashraf was therefore open to him.

DECISION

14. The decision of the First-tier Tribunal contains no error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 20 January 2014