



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09709/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 10 October 2014

Determination Sent  
16 October 2014

Before

Deputy Upper Tribunal Judge Pickup  
Between

KSR  
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant: Mr H Cheng, instructed by Duncan Lewis & Co  
For the respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, KSR, date of birth 1.1.69, is a citizen of Somalia.
2. This is her appeal against the determination of First-tier Tribunal Judge Elson, who dismissed her appeal against the decision of the respondent, dated 11.10.12, to refuse her asylum, humanitarian protection, and human rights claims, and to remove her from the UK by way of directions. The Judge heard the appeal on 11.4.14.
3. First-tier Tribunal Judge French granted permission to appeal on 6.6.14.
4. Thus the matter came before me on 10.10.14 as an appeal in the Upper Tribunal.

## Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Elson should be set aside.
6. The relevant background can be briefly summarised as follows. The appellant's claim for asylum was that she would face mistreatment due to her race, as a member of the Midgan clan, and had suffered discrimination because of her minority clan membership. She claimed to have been born in Qooroly, Midole in the lower Shabelle region, about 100 miles from Mogadishu. She claimed that on 6.9.09 a group of men from Al Shabaab came to her home, accused her and her husband of being traitors, and threatened to kill them. The men returned 2 days later, attacking both of them. Her husband escaped but was shot in the hand. She was taken prisoner and detained in a house for 2 months, accused of spying for the government. She was assisted to escape as one of her guards was a friend of her husband. She later collected the children for whom she was responsible, two sisters and a nephew, and took a bus to meet up with her husband in Mogadishu. It was agreed that she should leave Somalia for her own safety. They could not all afford to go but her husband raised \$3,000 to pay agents to help her flee Somalia.
7. She claimed that she would face a real risk of unlawful killing and torture or inhumane or degrading treatment or punishment on return and a serious and individual threat to her life or person by reason of indiscriminate violence in a situation of international or internal armed conflict. With the assistance of agents, she left Mogadishu on 3.12.09 for an unknown Arab country from where she flew to the UK on 23.12.09. Her claim for asylum was refused on 22.1.10 and her appeal dismissed on 4.5.10. However, she made further representations which were accepted as a fresh claim and resulting in a further refusal decision, dated 11.10.12.
8. Judge Elson found that the appellant's account contained unexplained inconsistencies and anomalies, as had the judge in the previous determination. Relying on Devaseelan [2002] UKIAT 000702, Judge Elson found no reason not to rely on the earlier findings of fact. Ultimately, Judge Elson considered the evidence adduced on the part of the appellant to be neither plausible nor credible. However, the judge found that on the basis of the language expert evidence, the appellant was from Southern Somalia. The judge found on the basis of the background material that the situation in Somalia had improved considerably since the promulgation of AMM, concluding that such violence that continues in Somalia was not at a level sufficient to place the appellant in need of international protection, and that even when violence and human rights abuses were prevalent a person should be safe in an area controlled by his/her clan.
9. The judge reached the conclusion that in light of credibility findings the appellant failed to make out her case as a refugee or risk on return. The judge also found that article 15(c) of the Qualification Directive, the objective material did not indicate a

level of indiscriminate violence to meet the threshold. The judge also found that article 8 was not engaged.

10. In essence the grounds submit that although the judge recited the submissions made at the hearing and found, contrary to the respondent's submission, that the appellant was from Southern Somalia, the judge failed to give adequate reasons as to why she rejected the appellant's case. The grounds further submit that there were no findings on the appellant's claim to be at heightened risk as a result of her particular circumstances. It is also claimed that the judge erred in her application of AMM and others (Conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC), to the particular facts of the appellant's case.
11. In granting permission to appeal on all grounds, Judge French found arguable merit in the grounds, with reference to MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) in relation to the failure to give adequate reasons.
12. The Rule 24 response of the Secretary of State, dated 19.6.14, accepts that whilst all the evidence was properly set out, the determination was not as clear and well-reasoned as it could have been. "It is however considered immaterial. Taking the findings of the previous Judge as a starting point, the Judge was entitled to doubt the appellant's credibility, and having found in her favour regarding where in Somalia she originated from, did not indicate that the previous Judge's findings were unreliable. Although the judge does not spell it out in her conclusions, it is clear that she finds that the situation in Southern Somalia to have changed since the promulgation of the most recent Country Guidance case. Her recitation of the evidence provided by the respondent, indicates that she had more than sufficient evidence to come to this conclusion."
13. The judge was entitled to take the findings of the 2010 First-tier Tribunal as the starting point, including the very detailed findings and reasons for those findings as to credibility. I note that the skeleton argument for the First-tier Tribunal appeal hearing sought to reopen and criticised the determination of 2010. However, Judge Dennis found at §21 that the appellant had produced no supporting documentary or other evidence to assist in evaluating her claim. It rested entirely on her own account of events, contained in her screening interview, her asylum interview and her testimony at the 2010 appeal hearing. Judge Dennis found the appellant neither a credible nor a reliable witness and that her account was implausible, giving detailed cogent reasons for reaching that conclusion. At §33 he said her evidence was characterised by a complete lack of reliability and concluded at §25 that her evidence was unreliable and a "conscious misrepresentation."
14. After reviewing in considerable detail the evidence and the submissions of the parties, at §69 Judge Elson noted the respondent's submissions as to why the 2010 findings should not be disturbed and that the appellant continued to give accounts that contained inadequately explained inconsistencies and anomalies. The appellant's representative submitted that the appellant had explain the discrepancies in her evidence and had not been inconsistent. However, at §77 the judge noted that

the present claim was based on the same factual matrix and thus, in line with Devaseelan, this second appeal should be determined in line with the first, noting that as an assessment of the matters that were before the earlier Tribunal it should be regarded as unquestioned and that it is not the role of the second judge to consider arguments intended to undermine the first judge's determination. In essence, the appellant was attempting to re-argue the same factual issues as had been determined against her by Judge Dennis, but doing so only by her further personal evidence.

15. At §79 Judge Elson found that nothing had been placed before her that could not have been placed before the earlier judge and cited the guidance of Devaseelan to the effect that with regard to matters that could have been before the first judge such evidence should be treated with the greatest circumspection. An appellant who seeks, in a later appeal, to add to the available facts in an effort to obtain a more favourable outcome is properly regarded with suspicion from the point of view of credibility. Whilst the force of this is somewhat reduced if there is some very good reason why the failure to adduce relevant evidence before the first judge should not be held against him, such reasons will be rare. No such very good reasons have been produced and, as stated above, the appellant was simply trying to reargue the case relying on the same factual claim.
16. Mr Cheng's submissions were to the effect that if the appellant was not misleading the judge as to where she was from, that must affect the other credibility findings of the first judge who did not accept that she was from Southern Somalia and the judge had to look again at the appellant's evidence and responses. Mr Cheng pointed to further explanation from the appellant. However, Ms Isherwood rightly pointed out that there was no additional evidence other than the word of the discredited appellant to demonstrate that her factual account was truthful. The case still turns largely on the appellant's personal evidence. The fact that she was from Southern Somalia does not open the door to a complete reassessment of the credibility findings of the previous judge, unless and only to the extent that they depend on that finding. There were clear and cogent reasons for rejecting the appellant's account, quite independent of her origin.
17. It is clear that Judge Elson did not close her mind to further evidence and carefully considered the further linguistic reports, finding in the appellant's favour that she is from Southern Somalia. However, in the view of Judge Elson, this did nothing to upset the other credibility findings of Judge Dennis, which were maintained and relied upon in §79 to §81 of the current determination. I find that it was open to the judge to do so.
18. In relation to AMM, at §357 the Upper Tribunal found that there was a category of middle class or professional persons in Mogadishu who can live to a reasonable standard and for whom the article 15(c) risk, which exists for the great majority of the population, does not apply. A returnee to such a milieu would not run an article 15(c) risk, even if forcibly returned, quite apart from the 'powerful actors' category. Regardless of where the appellant is from, the 2010 Tribunal found that she and her husband had elected to live in Mogadishu and appear to have been living there

comfortably running small enterprises, which enabled her husband to raise \$3,000 to fund her flight from Somalia.

19. Mr Cheng submitted that Judge Elson had failed to engage with AMM, but on the basis of the findings of Judge Dennis, there was no basis for considering that there was a risk on return to Mogadishu, where the appellant's husband continued to live and with whom she was in contact. Regardless of where she was from, the appellant and her husband had moved to settle and work in Mogadishu. AMM found a risk on return to south central Somalia owing to the presence of Al Shabab where the person had been away from that area, but there was no question in this case of requiring the appellant to return to South Somalia; she would be returned to Mogadishu and would be able to resume her relationship with her husband in that location.
20. In any event, Judge Elson detailed in the determination, including at §55, the background evidence relied on by the respondent, which suggests that the situation has changed since the promulgation of AMM, suggesting that there had been an improvement in security and that large parts of southern and central Somalia were relatively peaceful and that it was safe to travel from the airport into Mogadishu and that the armed conflict in Mogadishu did not pose a real risk of article 3 harm, regardless of circumstances. Al Shabab had also withdrawn from the appellant's claimed home area of Qooroly. At §83, evidently relying on this evidence, Judge Elson found that there was not a level of indiscriminate violence to meet the article 15(c) threshold. The judge noted that the appellant is a woman, but her own case was that her husband was still in Somalia and from his use of phone centres was likely to be still in Mogadishu. Thus the appellant would not be returning as a lone woman and she would not be particularly vulnerable on return, so that the risk to her was no greater than that of the population in general.
21. In his revised skeleton argument, Mr Cheng points to the recent decision of the Upper Tribunal in MOJ & Ors (return to Mogadishu) Somalia CG [2014] and no longer relies on the previous grounds in relation to AMM. In §337 of MOJ it is stated that the clear evidence is that in Mogadishu there is no inter-clan violence taking place and no real risk of serious discriminatory treatment on the basis of clan, though it remains the case that clan membership may remain important to social and economic support in Mogadishu. It is no doubt for that reason that Mr Cheng was obliged to alter the basis of the appeal. At §342, the Tribunal stated that for a returnee to Mogadishu today, clan membership is not a potential risk factor but something relevant to the extent to which he will be able to receive assistance in re-establishing himself on return, especially if he has no close relatives to turn to upon arrival. However this appellant returning to her husband in Mogadishu and a situation where she and her husband were able to live comfortably. At §344 -346 the Tribunal noted a remarkable economic boom in Mogadishu with huge inward investment with large-scale construction projects. Huge numbers have returned to Mogadishu, indicative of a considerable reduction in levels of violence and improvements in security. All of this led the Tribunal to conclude at §355 onwards that there was a sufficiency of protection, even if not in an orthodox way.

22. As highlighted in the skeleton argument and his oral submissions, the revised argument of the appellant is that AMM is unaffected by MOI in relation to the specific risk to the appellant returning as a lone woman and thus would have an additional vulnerability over and above the characteristics of the average returnee. I accept that at §333 MOI states that in respect of issues not addressed in that determination, AMM continues to have country guidance effect. However, I do not accept Mr Cheng's argument, as it ignores the facts as found that the appellant would not be a lone woman in Somalia, as she would be returning to her husband in Mogadishu, with whom she has retained regular contact. Judge Elson alluded to this at §35 of her determination. I find that there is insufficient to suggest that there was any such risk that could and should have been considered by the First-tier Tribunal. There is no merit whatsoever in the lone woman argument, the submission to which the appellant's representative has had to resort in the light of MOI.
23. In reality, there was nothing new before Judge Elson that had not already been determined by Judge Dennis. Whilst the determination could have been better structured and made more clear, I find that any error was one of form or structure and not of substance. There was no material error and, other than the finding that the appellant was from Southern Somalia, there was no reason to reopen the factual basis of the appellant's claim, solely on the further 'explanations' she wished to proffer as to discrepancies. The appellant's account has been comprehensively found to be implausible, not credible and inconsistent. There was nothing significant put before Judge Elson that justified overturning the clear and cogent findings of Judge Dennis
24. In the circumstances, I find no error in Judge Elson's determination.

### **Conclusion & Decision:**

25. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed:

Date: 15 October 2014

Deputy Upper Tribunal Judge Pickup

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case.



Signed:

Date: 15 October 2014

Deputy Upper Tribunal Judge Pickup