



IAC-YW-LM-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00058/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21 July 2015**

**Decision & Reasons Promulgated
On 1 September 2015**

Before

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF
DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

Between

**AYAN MOHAMED HAJI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Rana of Counsel instructed by Aden & Co, solicitors

For the Respondent: Mr N Bramble of the Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a national of Somalia born on 22 March 1988 in Mogadishu.
2. Following a determination promulgated on 17 September 2007 under reference OA/52470/2006 she was granted a residence card entitling her to enter as the wife of an EEA national exercising treaty rights in the

United Kingdom. She arrived in about December 2007. In about June 2012 she and her husband separated. Her claim for a permanent residence card was refused by the Respondent and her appeal against that refusal was dismissed by a determination promulgated on 3 September 2014 under reference IA/23579/2014.

3. Subsequently on 17 September 2014 she applied for international surrogate protection because she feared to return to Somalia on account of being a lone female member of a minority clan. On 12 December 2014 the Respondent refused her claim and her appeal against that refusal was heard by Judge of the First-tier Tribunal Greasley who, by a decision promulgated on 23 April 2015, dismissed her appeal.
4. The Judge accepted that the Appellant was a member of the Ashraf clan but made an adverse credibility finding against her and in particular rejected her claim that she had no family members in Somalia.
5. The Appellant sought permission to appeal which on 18 May 2015 Judge of the First-tier Tribunal Astle granted on the basis that it was arguable the Judge had failed adequately to address the part of the expert report by Professor Aguilar (the expert report) which the Appellant had submitted dealing with the safety of minority clan women in Mogadishu, even if they had family members there, and also failed adequately to consider a report from the Minority Rights Group International (UK) of 30 January 2015 entitled "No One Cries for Them: The Predicament Facing Somalia's Minority Women" (the MRG report).
6. The grounds for appeal challenge the Judge's treatment of the expert report, asserting the Judge had accepted substantial elements of it but had failed to address the essential part relating to the position of women on return to Mogadishu. They also asserted that he had not addressed the submissions made on the Appellant's minority clan membership as well as on the expert report and the MRG report.

The Upper Tribunal Hearing

Submissions for the Appellant

7. For the Appellant, Mr Rana relied on the grounds for appeal in support of the Appellant's permission application. The Judge had accepted the Appellant was a minority clan member. He submitted that this was based on the expert report's finding at paragraph 33. This may be so but we would add there was additional evidence before the Judge to support his acceptance of her claim to be Ashraf, particularly the fact that that finding had already been made in the 2007 determination leading to the grant of a residence card.
8. He continued that, at paragraphs 50 and 51 of his decision, the Judge had failed to deal expressly with the risk to minority clan women on return to Somalia. He noted the determination in *MOJ & Others (Return to*

Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) had not expressly dealt with the position of women. He noted that all three Appellants were male.

9. Mr Rana argued that the Judge had failed to take account of the objective evidence which was before him and in particular parts of the MRG report and the Respondent's Country Information and Guidance of 19 March 2015 on south and central Somalia – Majority Clans and Minority Groups (the COIR). We noted that additionally the Appellant had filed a report of 3 February 2015 from the same source on women fearing gender-based harm/violence.
10. He referred firstly to the MRG report. Its central passages had been highlighted in the copy filed for the Appellant. In particular he referred to pages 16 and 26 of the bundle which state:-

'Although the civil war in Somalia has all but ended, minorities continue to be considered the weakest in Somali society. Minority women ... face multiple forms of discrimination in Somalia, and are uniquely vulnerable to rights violations on the basis of both their gender and minority identity. While majority clan women by virtue of their position in the traditional clan structure have some level of protection and access to basic services and other institutional processes, particularly those from wealthy families or with strong family connections, minority women lack these protections and so suffer a range of more pronounced forms of social, cultural and economic discrimination.'

... minority women ... face a variety of threats, including physical violence, sexual abuse, theft and forced labour. Many feel especially vulnerable in the absence of clan protection, lack of faith in official institutions such as the police and the broader context of insecurity in many parts of southern Somalia, particularly its informal settlements and IDP camps.'

Further, he referred to a passage on page 29 noting that minority women because of distinct physical features, traditional occupations and related social attitudes, experience hate speech and social harassment.

11. Mr Rana then referred to the COIR. He relied on passages at pages 41, 56 and 59 in the Appellant's bundle which were also highlighted. These state:-

'Members of minority groups in south and central Somalia are at a particular disadvantage in comparison to members of the majority clans. They usually lack the support network provided to members of the majority clans and as a result are subject to political, social, economic and judicial discrimination, and have experienced human rights abuses including harassment with violence, killings, torture, rape, kidnapping for ransom, and looting of land and property, which in some circumstances may amount to persecution. ... Crimes against women, especially amongst women from minority groups, are often perpetrated with impunity ... This particularly applies to single women'

or a woman who is head of a household who may also be liable to gender-based violence and trafficking.

Minority groups in Somalia are marginalised and face a difficult humanitarian situation, according to sources. The minority groups lie outside the clan system, and the clan structures pose particular difficulties for them. ... particularly vulnerable minorities ... include ... Ashraf ...'

Mr Rana submitted that failure to address these points specifically amounted to a material error of law.

12. He then turned to the expert report and submitted that the Judge had failed adequately to address the relevant parts. He noted the expert report at para.35 referred to the MRG report and at para.36 summarised the key findings by quoting in full the paragraph headed "Key findings" from the MRG report. At para.37 the expert report stated:-

'The key findings of this report suggest that the client would be at risk of violence, marginalisation and rape, because of her status as a woman belonging to a minority clan.'

At para.47 the expert report noted that para.56 of the Respondent's reasons letter did not recognise the danger a woman from a minority clan faces on return to Mogadishu if she did not have family there. He concluded the decision contained material errors of law and should be set aside.

Submissions for the Respondent

13. Mr Bramble noted the Appellant's argument had focused on the objective evidence and there had been no challenge to the Judge's finding that the Appellant had family in Mogadishu made at paragraph 50 of his decision. He had taken into account the expert report and the guidance in *MOJ & Others*.
14. Turning to the expert report he noted it set out the key findings of the MRG report, the introduction to which he noted started with a quotation from a Benadiri woman in Puntland stating that the most dangerous place is in an IDP camp because that is where most rape happened. Puntland was different from Somalia and Mogadishu. The areas of risk to a woman on return to Mogadishu were in the IDP camps but the Judge had found the Appellant would not be returned as a lone woman and would not go to any IDP camp because she had family in Somalia.
15. Turning to page 46 of the expert report addressing the instruction to the expert to comment on the MRG report, Mr Bramble submitted the comments added nothing. The conclusions at paragraph 48 were on the express assumption that the risk would be to the Appellant if she did not have family in Mogadishu and the conclusion that she would be at risk

contained in the middle of the paragraph needed to be viewed in that context.

16. The MRG report focused on minority clan women but *MOJ & Others*, a recent country guidance case, noted the diminution of the importance of clan membership and the shift in emphasis from the clan as providing protection to the clan as a social network which could provide support. The MRG report had to be considered in the context of *MOJ & Others*. The Upper Tribunal in *MOJ & Others* had found that there were different dynamics in play from those described in the MRG report which was subsequently published.
17. The main area of risk identified in the MRG report was in the IDP camps but the Appellant would not be going there because she had been found to have family in Somalia. The extract from the MRG report at page 56 of the Appellant's bundle referred to minority groups generally, not just women, and that the risks were predominantly in the IDP camps. At paragraph 50 of his decision the Judge had taken this into account, referring to a passage in the MRG report which also was addressed in the expert report. There had been no material error of law and the decision should stand.

Further Submissions for the Appellant

18. Mr Rana confirmed that the Judge's findings on the presence of family of the Appellant in Somalia were not challenged. The Judge had not adequately addressed the MRG report and the COIR which amounted to a material error of law.

Findings and Consideration

19. The introduction to the MRG reports notes that there is little data available about the position of minority women. It refers to them as being at greater risk of sexual assault and other rights abuses than members of majority clans who have more social resources. It goes on to note that they face multiple forms of discrimination on account of their gender and minority identity: see page 11 of the Appellant's bundle. Elsewhere the report refers to forms of social, cultural and economic discrimination. The conclusion notes that:-

‘Empowering minority women to play an equitable role in Somalia will involve a complex and long-term process of social transformation. In the immediate term, protection concerns for minority women, particularly sexual and gender-based violence perpetrated by militias, armed forces and members of majority clans as well as men from their communities, must be urgently prioritized to ensure their safety and dignity. ...’

20. Although the expert report was intended expressly to address risk on return as a female minority clan member, it states at para.34:-

'In my opinion she would be at risk of violence from majority clans because she belongs to a minority clan and because she is a woman who belongs to a minority clan. The protection for minority clans does not come from their families but from majority clans or the state. Years of violence have proven that neither the state nor the majority clans have protected members of the Ashraf clan within Mogadishu. The client would have no protection within Mogadishu.'

The expert report does not address the findings of *MOJ & Others* or give any sources for the basis for that opinion and makes no material or substantive comment on the MRG report at paras.34-37. At para.38 the expert report simply asserts that the situation after *MOJ & Others* has not changed substantially and women are at a high risk of violence and rape. There is no material engagement with *MOJ & Others*.

21. Para.39 of the expert report is instructive because it relies on the quotation from a Benadiri woman in Puntland, already referred to, and concludes:-

'It is plausible to suggest that the objective evidence suggests that a woman from a minority clan is not safe in Mogadishu regardless of having family members. The report [the MRG report] ... suggests that minority clan women do not have effective protection available for them.'

22. The country guidance in *MOJ & Others* was expressed in gender neutral terms. In *R and Others (Iran) v SSHD [2005] EWCA Civ.982* the Court of Appeal considered without disapproval Practice Statements 18.2-18.4 which now appear in identical or near identical terms as Practice Statement 12. The Judge was required to follow *MOJ & Others* unless there were good reasons not to. There was no evidence the Judge was given good reasons for departing from *MOJ & Others* and indeed before us such an argument was not strongly urged.
23. The Judge engaged with the expert report and with the MRG report, if only because it was addressed in the expert report. He also looked at other background evidence referred to at para.37 of his decision. We conclude that his consideration of the evidence was adequate and the grounds for appeal in essence amount to disagreement with him.
24. We find the First-tier Tribunal's decision does not contain a material error of law and shall stand.

Anonymity

25. There was no request for an anonymity order and having heard the appeal we consider one is not required.

NOTICE OF DECISION

The First-tier Tribunal's decision does not contain a material error of law such that it should be set aside and it shall stand. The effect is:-

The appeal of the Appellant is dismissed.

Signed/Official Crest

Date 27. vii. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal