



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

Appeal Number: AA/10809/2009

THE IMMIGRATION ACTS

**Heard at Glasgow
on 7 July 2015**

**Determination issued
On 8 July 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H V McCusker, of McAuley McCarthy & Co, Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claims that he is a citizen of Somalia and that he entered the UK in 2009 on a false passport. He sought asylum a few days later. The respondent refused that claim for reasons explained in a letter dated 10 September 2009, relying in part on a report by *Sprakab* dated 1 September 2009.
2. Immigration Judge McGavin dismissed the appellant's appeal to the Asylum & Immigration Tribunal by determination promulgated on 5 February 2010.

3. Under transitional provisions, the appellant obtained permission to appeal to the Upper Tribunal, on grounds critical of the *Sprakab* report. By determination dated 20 December 2010 the Upper Tribunal dismissed the appeal. The appellant appealed to the Court of Session, which reversed the decision of the Upper Tribunal: [2013] CSIH 68. The Secretary of State appealed to the Supreme Court, which dismissed the appeals by the Secretary of State, , and confirmed on 21 May 2014 that this case fell to be remitted to the Upper Tribunal: *MN and KY* [2014] UKSC 30; [2014] Imm AR 981.
4. Representatives agreed on 7 July 2015 that the Upper Tribunal should set aside the determination of the First-tier Tribunal. Mr McCusker submitted, somewhat faintly, that a further hearing might be unnecessary and the appeal, as brought to the First-tier Tribunal might simply be allowed. However, as Mrs O'Brien pointed out, this case did not turn only on placing undue reliance on the *Sprakab* report. Both representatives agreed that if an entirely fresh hearing were to take place, that should be in the First-tier Tribunal.
5. Mr McCusker indicated that in a fresh hearing the appellant would rely on Article 8 grounds, as he now has a wife and child who are both UK citizens. Those circumstances have been made known to the Secretary of State but no further decision has been forthcoming.
6. The determination of the First-tier Tribunal errs in law, for reasons explained by the Inner House and by the Supreme Court. It is **set aside**. No findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the Tribunal chosen to reconsider the case are not to include Judge McGavin.
7. Within 14 days of the date this determination is issued the appellant is to file with the First-tier Tribunal and to copy to the respondent a concise note of the circumstances on which he now relies and of any proposed amendment to his grounds of appeal.
8. Within 14 days of receipt of that note and any amended grounds, the respondent is to file with the Tribunal and copy to the appellant a note explaining her updated position and (if the adverse decision is maintained) a note of her reasons for refusing leave whether on the basis of asylum, humanitarian protection, Article 8, or any other grounds.
9. The UT and FtT do not have an original file containing materials previously relied upon. Parties are to provide the FtT with fresh indexed and paginated bundles of all materials on which they seek to rely in further proceedings.

7 July 2015
Upper Tribunal Judge Macleman