Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01675/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1st September 2015	**On 17th September 2015**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IH
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr S Whitwell, Senior Presenting Officer
For the Respondent: Mr H Cheng, Solicitor instructed by Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. This is an appeal which involves a minor and the First-tier Tribunal made an anonymity direction for the purpose of safeguarding her welfare. For those reasons, the Upper Tribunal continues the anonymity order previously made by the First-tier Tribunal. I therefore make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless the Upper Tribunal or a court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or

indirectly identify the Appellant. This prohibition applies to, amongst others, all parties and their representatives.

2. This is an appeal brought by the Secretary of State, with permission, to appeal the decision of the First-tier Tribunal (Judge Nightingale) who, in a determination promulgated on 5th June 2015 allowed the appeal against the decision of the Respondent dated 6th August 2013, to make a deportation order against her.

3. Whilst the appeal is brought by the Secretary of State, I shall refer to the parties as they were before the First-tier Tribunal.

4. The Appellant is a citizen of Somalia who appealed the decision of the Respondent, dated 6th August 2013 to make a deportation order by virtue of Section 3(5)(a) of the Immigration Act 1971. It was considered conducive to the public good to make this order following her conviction for robbery on 2nd December 2009 at Snaresbrook Crown Court.

5. There is a considerable history to these proceedings I shall therefore set out in brief terms the background to the appeal. The Appellant claimed that she arrived in the UK with the help of an agent on 22nd October 2001 when she was 9 years of age. A claim for asylum was made later which was refused on 5th December 2001. The Appellant was a minor at that time and was granted exceptional leave to remain until 4th December 2005 and following a further application she was granted indefinite leave to remain on 6th March 2006.

6. On 2nd December 2009 at Snaresbrook Crown Court, she was convicted of robbery and having an imitation firearm with intent. On 20th February 2010 at the Juvenile Court she was convicted of a further offence of robbery and was sentenced on 19th March 2010 at Snaresbrook Crown Court to a total period of 36 months' imprisonment. She received a sentence of 28 months for robbery and eight months for the imitation firearm. On 31st March 2010 at the Juvenile Court she was sentenced to a ten month detention and training order.

7. As a result of that conviction, she was sent a notice of her liability to automatic deportation on 10th May 2010 to which she responded thereafter on 20th May. Her custodial sentence was completed on 22nd April 2011 and she was held in immigration detention. A further notice about her liability to deportation was served with a notice of a decision to remove on 10th May 2011 and on 2nd June 2011 she was served with a reasons for deportation letter but she did not lodge an appeal against this decision. Subsequently she made further representations and made a claim for asylum. In July 2012 judicial review proceedings were issued as no decision had been made on her application but in a decision letter dated 2nd July 2013, the Respondent explained why the asylum application was being refused and a deportation order being made.

8. On 6th August 2013 the formal decisions were made to refuse asylum and to make a deportation order by virtue of Section 5(1) of the Immigration Act 1971. The Respondent also issued a certificate under Section 72 of the Nationality, Immigration and Asylum Act 2002.

9. The Appellant appealed against the decisions and her appeal was heard on 6th May 2014 by the First-tier Tribunal. The findings of the Tribunal were set out in a determination promulgated on 12th June 2014 (the First-tier Tribunal Judge panel). They had to consider whether the certificate under Section 72 should be upheld and in this regard they summarised her case and on the deportation issue it was argued that since her release of detention in October 2011, there was sufficient evidence to rebut the presumption that she constituted a danger to the community and to show that she had matured since she committed her crimes, regretted her behaviour and was determined not to re-offend. The panel found that the presumption under Section 72 had been rebutted. In relation to the asylum claim, the panel did not accept her claim for asylum and found that there was a real likelihood that she had family members remaining in Somalia and that she was from Mogadishu. On the basis of the findings that they made her claim was dismissed on asylum and humanitarian protection grounds. However when considering to make a decision on the deportation order and whether it would breach her rights under Article 8, the panel reached a conclusion at [52] that the appeal should be allowed under Article 8.

10. As a result of that decision, an appeal was brought by the Secretary of State against the decision of the First-tier Tribunal panel allowing her appeal under Article 8. A Rule 24 notice and cross appeal was filed on behalf of the Appellant dated 30th July 2014, which raised a cross appeal against the refusal of her protection claim submitting that the Tribunal's assessment of credibility was flawed, that it had failed to apply the country guidance case in **AMM and others (conflict; humanitarian crisis; returnees; FGM) [2011] UKUT 91** by failing to assess the durability of any improvements in Mogadishu after Al-Shabaab's withdrawal and erred in its assessment of Article 3.

11. The appeal came before the Upper Tribunal (Judge Latter) on 28th August 2014 and in a determination promulgated on 10th October 2014 Judge Latter found that the First-tier Tribunal had erred in law having been satisfied that both the appeal and the cross appeal should succeed. His reasons for reaching that conclusion were set out at paragraphs [17-23] of his determination and consequently he set the decision aside and remitted the matter to the First-tier Tribunal for the decision to be made afresh save that in respect of the findings on the Section 72 certificate which were preserved.

12. Thus the appeal came before the First-tier Tribunal (Judge Nightingale) on 2nd June 2015. In a decision promulgated on 5th June of that year, the judge allowed the appeal on both asylum and Article 8 grounds.

13. The Secretary of State sought permission to appeal that decision on six grounds and permission was granted on 7th July 2015.

14. Mr Whitwell on behalf of the Secretary of State relied upon the written grounds and in view of their length, did not seek to make any further oral submissions.

15. Mr Cheng on behalf of the Appellant relied upon the Rule 24 response that had been filed in these proceedings and also a skeleton argument that he had prepared on her behalf dated 1st September 2015. In respect of Ground 1, he referred the Tribunal to the documents in the bundle that had been provided on behalf of the Appellant in 2001 which comprised of an undated, unsigned statement (page 11) which the maternal aunt had signed for her in view of her young age. The judge's findings took into account her age and that any inconsistencies should be given limited weight in view of that. Consequently he submitted the findings of the judge in this regard at paragraph [47] were open to the judge to make.

16. Whilst the Secretary of State raised the issue that the judge appeared to find that the Respondent may have had clan protection in the past, it was submitted that this was a misreading of paragraph [53] and that the issue was addressed in an "even if" manner saying that if the Respondent had protection between 1995 to 2001 it was not likely to be in existence now. The judge had found that she had had no communication with any person in Somalia since her departure at the age of 9 and thus was not able in those circumstances to identify what clan she may be as she did not know, nor would she be able to identify any methods of support. The judge made proper findings as to whether or not she was able to access support on return to Mogadishu.

17. Mr Cheng referred to the Ground at 2 and 3 whereby the Secretary of State asserted that the error rested within a finding that the Appellant was not in a genuine and subsisting relationship with the partner. He pointed out that at the hearing before the First-tier Tribunal, the Secretary of State did not accept that the Appellant was in a subsisting relationship and that formed the basis of the case before the First-tier Tribunal. Thus it was unclear how the First-tier Tribunal could have been said to have been illogical in making a finding that the Appellant was not in a genuine relationship bearing in mind that was the way the case was advanced on behalf of the Secretary of State. Thus where the grounds dealt with that as an issue, the findings of the judge were open to her to make.

18. As to Ground 3, it was submitted that the judge was entitled to consider her as a lone woman as in the light of the findings made by the judge, she would not have the support of her partner or any members of his family. As regards FGM, he submitted that whilst the decision in **AMM** referred to potential victims of FGM being protected from harm if the parents disagree with the practice, this was a case where the Appellant would be returning with no familial support and thus the judge was entitled to find that the Appellant fell within the category identified in **AMM** and was at risk of

suffering FGM were she attempt to integrate into any particular group, clan or society or Mogadishu as she would not have any protection.

19. His submissions were that the determination did not demonstrate any arguable error of law and that the grounds were merely a disagreement with the findings reached by the judge having taken into account the country guidance case of **MOJ and Others (Return to Mogadishu) (CG) [2014] UKUT 442** and on taking into account the particular circumstances of this Appellant.

20. Mr Whitwell on behalf of the Secretary of State responded by stating that the consideration of clan membership was insufficient by the judge and that was a material error of law. As to Ground 4, the Appellant was living with her child and her in-laws and even discounting support from the father, that itself would provide some provision for her and whether remittances could be continued from those relatives were not taken into account. As to the issue of FGM, the case law demonstrated there must be some form of pressure whether from in-laws or from family members but, as she was returning as a single lone woman, there would be no pressure coming from the in-laws or from any parents thus she had not demonstrated she would be at risk.

21. I reserved my determination.

Discussion:

22. The grounds advanced on behalf of the Secretary of State assert that the judge made material errors of law in the determination and in particular Ground 1 that the judge failed to make lawful findings. In this context it was asserted that the judge failed to consider the matters in the refusal letter, in which it was stated that the Appellant had failed to provide a coherent account of her personal circumstances in Somalia between the evidence in 2001 and that in 2011 and as such, the judge had to resolve why she was able to give details of her clan and city of residence as Mogadishu in 2001 and yet not know what her clan membership was in 2011. It was also asserted that the judge's lack of scrutiny concerning her clan membership was reflected in the judge's findings at paragraph [53].

23. Paragraphs [35-53] of the decision letter from 2013 is replicated in the Secretary of State's grounds. As set out above it raises the following issues (also raised in the supplementary letter dated 2015), relevant to the previous evidence given by the Appellant relating to her clan membership in Somalia before she left her country of residence. It makes reference to her claim for asylum which was refused in a refusal letter of 5th December 2001. It was stated that when she claimed asylum she provided evidence that she was a member of the Benadiri sub-clan Shanshiya. However, when questioned about her claim in an asylum interview in 2011 when asked specifically what clan she was from her response was "I do not know" (question 9). Furthermore at question 15, in

the interview she was asked “Do you recall any lineage of your clan?” she responded “I really do not know. I do not believe in anything like that.”

24. The letter made reference to the recent version of events and that the Appellant had resided in Somalia until she was 9 years of age (in 2001) and then lived with her aunt until 16 years of age and makes reference to the witness statement and screening interview in 2001. It was stated that it would be highly unlikely that she would be unable to identify her clan lineage during the asylum interview if she was a genuine member of a minority clan as she had claimed in 2001. Thus in the refusal letter it was recorded at [44] that firstly she had displayed a lack of ignorance surrounding her clan membership, the Benadiri in Mogadishu had their own dialect of the Somali language Af-Hama but the Appellant only spoke Somali despite living there until she was 9 and then living with her aunt and therefore she had not demonstrated she was a member of the Benadiri clan. Furthermore, it was not accepted that her parents were killed by the majority clan and that she was able to reside in Mogadishu from 1995 until 2001 without any significant problems which showed that she was not a member of the Benadiri minority clan.

25. The judge’s findings relating to those issues raised are set out at paragraphs [46-58] of the determination. The judge gave consideration to the factual circumstances surrounding the appeal and that this was not the “run of the mill” asylum claim and that there were particular factual matters raised from its history. It was common ground that the Appellant arrived in the UK at the age of 9 years. Contrary to the grounds, the judge properly considered the issue of inconsistent evidence that is, in 2001 she could give her clan membership but could not in 2011, by setting it against the Appellant’s background and the circumstances in which that evidence and claim was made. Having done so, the judge found that her inability to provide an autobiographical account of her time in Somalia was entirely understandable as she had arrived at the age of 9 and the judge found that he would not expect the memories to be detailed and necessarily reliable in those circumstances (see [48]).

26. The Appellant left Somalia as a child and only had a few memories of that time and place. The judge recorded that she recalled being sent abroad but did not know her clan origins or those of her parents. At paragraphs [48] and [52] the judge plainly gave consideration to the points raised by the Respondent in the refusal letter of 2013 [and that of the supplementary letter in 2015] that she had lived with her aunt previously and that in those circumstances that it was likely that she would have had some information about her clan membership/upbringing.

27. In this context the judge gave a description of the Appellant as presenting as a –

> “… westernised young woman who speaks English with a London accent, dresses in a smart and fashionable manner with no headscarf and other outward indication of any religious identity.”

The judge also recorded from the findings that she was "not particularly embedded in the Somali community in the UK." The judge went on to state –

> "Given her age of the Appellant on arrival (age 9) and the description of her upbringing by her aunt and estrangement from her aunt as a child that 'I do not find it implausible that she would exhibit inconsistencies and indeed 'blanks' in her recollection of events in Somalia.'"

28. In this context, the Appellant's evidence concerning her relationship with her aunt was that she had had a difficult relationship with her aunt and they had fallen out over her refusal to wear a headscarf, behave conservatively or agree to marriage and that she had become estranged from her at the age of 15 when she was still a child (see [37] and judge's findings at [52]). At [52] the judge found that the Appellant had rejected her cultural and religious aspects of Somali life that her aunt had wished her to adopt. The judge was satisfied that this led to a breakdown in their relationship. Consequently, the judge's findings when drawn together were as follows; the Appellant had a difficult relationship with her aunt and rejected her cultural and religious aspects of Somali life. This led to the breakdown of the relationship between them and the Appellant left her household when she was still a child. The judge found she was not embedded in Somali life or culture demonstrated by her rejection of those issues and also by her presentation as a westernised young woman who spoke English, who dressed in a fashionable manner with no headscarf and gave no outward indicators of any religious identity. The judge found that against that background that her lack of information about her clan membership was not determinative of her overall credibility [52] and that given her age on arrival and subsequent estrangement from her aunt, it was not implausible that she would have "blanks" or inconsistencies as to her recollection of events in Somalia.

29. In my judgment when reading the determination as a whole it was open to the judge to reach the conclusion that it was not implausible that she should exhibit inconsistencies or "blanks" in her recollection of events in Somalia. In reaching those overall conclusions, the judge plainly had regard to the argument set out in the refusal letter at 2013 and the subsequent supplementary letter of 2015 (at paragraph [48]) and the nature of the evidence relied upon by the Respondent which had led to the decision in 2001. This consisted of the material set out at Annex J. There was a witness statement that was unsigned by the Appellant and it was recorded on 13th November 2001 that "the client too young to sign maternal aunt signed for her." There is no record of any asylum interview carried out with the Appellant at the age of 9 and consequently, it was open to the judge to attach little weight to any inconsistencies between the account given in 2001 when she was a minor and against that particular background and the fact that in 2011 she could provide no details. I observe that when Judge Latter allowed the cross appeal (against the decision of the First-tier Tribunal which dismissed the appeal on asylum grounds) he said at [21] that the Tribunal in considering that issue had failed to give proper account to the fact that reliance was placed

on information obtained from the initial asylum claim at a stage where the Appellant was 9 years of age, the form being endorsed with the fact that she had not signed the same in the light of her age. Consequently, contrary to the grounds the judge properly made a lawful consideration of those issues.

30. The Respondent in the grounds also makes reference to paragraphs [51] and [53] of the determination and that it was insufficient for the judge to speculate that those people formerly in Somalia may have moved about. It was incumbent on the judge to resolve whether the Appellant had been protected when she had formerly been living in Somalia on the basis that she was either from a majority clan or a minority clan affiliated with the majority clan. Thus it was submitted that this was the necessary finding to make.

31. The judge's findings at [51] and [53] must be read in the context of the findings as a whole. In particular, the earlier findings relating to her historical problems of having no proper recollection of her life in Somalia before the age of 9. The judge had found that it was entirely plausible that she had "blanks" in her recollection of events (at [48]). Similarly her relationship with her aunt was such that she did not know of her background and she was not embedded in Somali culture or life; the inference being that she did not have any access to those pertaining to her own "clan". At [47] the judge accepted the Appellant's evidence that she had memories of her sister whose name she knows but whose face she could not remember. At [51] the judge refers to the submissions of the Respondent that she "might possibly have family in Mogadishu" and at [53] and [54] reached the conclusion that whilst the Presenting Officer had stated that it was "possible" that she "might" have some relations in Mogadishu, it was nothing more than a possibility and that on the lower standard, the Appellant had established that it was not reasonably likely that she had family remaining in Mogadishu.

32. The judge reached that conclusion on the basis that it was sixteen years since she was last in Somalia at the age of 9 and that in the light of the country conditions and the upheaval during the period that had elapsed, many individuals had either left or relocated internally. This was a finding open to the judge on the evidence and the history of Somalia and does not appear to be challenged by the Secretary of State. In those circumstances it could not properly be described as speculative as the grounds assert.

33. Whilst the grounds at paragraph 4 assert that the judge accepted at [53] that the Appellant's family had clan protection, this is a misreading of paragraph [53]. What is plain from the determination is that the Appellant herself did not know what clan she was from nor could she give any indication of her circumstances in Somalia before she left aged 9. The judge accepted the reasons that were given and that the account in 2001 for the reasons outlined above was an unreliable one. At [53] the judge at its highest was saying that the fact that she may have been able to reside in Mogadishu until 2001 provided a suggestion that she was afforded some

protection. However, the judge properly took into account the position as it was at the time of the hearing and in the light of the passage of time, sixteen years having passed. As the country guidance decision in **MOJ** makes plain, the significance of clan membership in Mogadishu has changed. The Tribunal found that the significance of clan membership had changed that clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. The Tribunal also found that there were no clan militias in Mogadishu, no clan violence and no clan based discriminatory treatment, even for minority clan members.

34. The country guidance case of **MOJ** also set out the position of those returning to Somalia after a period of absence and the judge considered the decision in his analysis. At [vii] the Tribunal made reference to a person returning to Mogadishu after a period of absence who would –

> "... look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer."

35. At [i] and [x] the Tribunal stated –

> "If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all the circumstances. These considerations will include, but are not limited to, circumstances in Mogadishu before departure; length of absence from Mogadishu, family or clan associations to call upon in Mogadishu, access to financial resources, prospects of securing a livelihood, whether that be employment or self-employment, availability of remittances from abroad, means of support during the time spent in the United Kingdom, why his ability to funds from the west no longer enables an Appellant to secure financial support on return."

At [x] the Tribunal stated –

> "It will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially if there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away."

And at [xi] –

> "It will therefore only be those with no clan or family support who will not be in receipt of remittances from abroad and have no real prospect of securing access to a livelihood on return who will face a prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms."

At [xi] the Tribunal also stated –

> "The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without

> being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links with the city, no access to funds and no other former of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards."

36. Thus the judge applied the guidance given in **MOJ** to the Appellant's circumstances. The judge finding that the Appellant left at the age of 9 and had not returned, that there was a realistic possibility that none of her relatives are still in Mogadishu and that she had had no contact with anyone with Mogadishu or Somalia since she was 9, sixteen years ago [53]. The judge found that she would be returning to Somalia to a place where she knew no one and could not prevail on any person for protection and that she had sought to distance herself from the Somali community both culturally and in a religious context and her memories of Somalia were fractured and poor. The judge found that she adopted a westernised attitude and had chosen not to follow the culture and religious norms of the Somali community.

37. The judge also found that she would be returning as a lone woman with no family connections or as a sole head of a single parent household with a British citizen baby with no familial links in Mogadishu and that as her asserted partner had not even attended the hearing in London, the judge found that it was "highly unlikely to provide financial support for her in Mogadishu" [54]. At [55] there was no evidence that the father of the child would continue supporting her financially on return to Mogadishu and she had no access to any further remittances. Consequently, taking into account all of those findings that were open to the judge to make on the evidence before him, the judge was entitled to reach the conclusions by applying the country guidance of **MOJ** as cited above. In those circumstances, the judge properly considered the question of clan membership but was entitled to find on the evidence before him, that by reason of her particular circumstances and on the particular facts of this case that she fell within those circumstances as outlined in **MOJ**.

38. The grounds at various paragraphs assert that the judge's finding that she was a lone woman with no family connections was an error of law. This was based on the fact that she was residing in the UK with a partner and his relatives and that the judge failed to make findings as to the support from her partner. Mr Whitwell on behalf of the Secretary of State recognised the illogical nature of those submissions given the position taken by the Secretary of State not only in the refusal letter but at the hearing before the First-tier Tribunal. In the refusal letter in 2015 the Secretary of State specifically referred to the Secretary of State's case at paragraphs 47 and 48 that it was not considered the Appellant was in a genuine or subsisting relationship. In the submissions before the First-tier Tribunal at [29] the position of the Respondent was recorded as follows:-

> "It was not accepted that the Appellant was in a relationship with her partner in the most recent refusal letter and the fact that he had not signed his statement or attended the hearing to support the mother of his child was a further indication that this was no longer a genuine or subsisting relationship."

39. In those circumstances and in the light of the lack of evidence concerning the Appellant's partner and the findings made by the judge about his failure to attend, it was open to the judge to reach the conclusion at [54] that in view of the lack of evidence it was highly unlikely that he would be financially supporting her in Mogadishu. In those circumstances, the judge's findings at [55] were entirely open to him that there was nothing to demonstrate that the family would continue to support her financially if she were in Mogadishu and that there was a real risk that there would be no availability of financial remittances from the UK or elsewhere and that she would have no access to financial support for herself or her British citizenship child.

40. As to the other issue raised by **MOJ**, it was open to the judge to find at [55] that the Appellant did not fund her journey to the west as it was funded by her family at the time when she was 9 years of age.

41. It is further asserted in the grounds that the judge erred in his approach to the risk of FGM on return to Somalia. In particular it is asserted that the conclusion that the Appellant herself (age 24) would be at risk of being subjected to FGM, that the judge misunderstood the findings in **AMM and Others (Conflict; humanitarian crisis, returnees; FGM) Somalia CG [2011] UKUT 445**. In this context it is asserted that the judge characterised the guidance as to applying to any unmarried woman under the age of 39.

42. I do not consider that that ground is made out either. The judge set out the evidence at paragraphs [49], [54] and [56]. The judge recorded at [49] that the Appellant gave evidence in a "clear and largely straightforward manner". The judge accepted that there were some matters of which she was not certain and that she –

> "... frankly admitted that she had been told, following a miscarriage, that she might have been subjected to FGM in the past. However, she had no memory of any such events."

The judge went on to state that she had no memory of FGM but was frank in her admission that she had some gynaecological difficulties in both the previous miscarriage and a caesarean delivery for her child and she was told that this may have happened. The judge properly applied the lower standard to the fact-finding exercise and went on to state –

> "The fact that there is a possibility that she had already undergone FGM does not preclude equally a real risk or serious possibility that she has not, as yet, been subjected to FGM."

The judge made the point at [49] that if the Appellant was seeking to mislead the Tribunal in claiming that she had not undergone FGM when she knew that she had, then the judge could find no reason as to why she would offer voluntarily in the course of her oral evidence the fact that she had been told following her miscarriage that she might have been "cut". The judge therefore reached the conclusion that he was –

> "... fully satisfied that she has no memory of having undergone FGM which is most commonly performed at the WHO stage iii in Somalia. The evidence creates a realistic possibility that she has not as yet undergone FGM."

At [54] the judge stated that she had established a real risk that she has not at the present time undergone FGM and at [56] turned to the consideration of risk of FGM. The judge found that she would be at risk of FGM on the basis that if the Appellant tried to access clan support or indeed join a particular community in Mogadishu, then she would be subjected to strong pressures to undergo this mutilation. The judge had regard to the objective material referred to in **AMM** that the incident of FGM in Somalia was universally agreed to be over 90 percent and that the most extreme form "pharaonic" which is categorised by the World Health Organisation as type iii that any uncircumcised, unmarried Somali woman up to the age of 39 would be at real risk of suffering FGM. The judge found that the Appellant fell within that category on the lower standard and was at risk of suffering FGM were she to attempt to integrate into any particular group, clan or society in Mogadishu. The determination of **AMM** at paragraph 560 stated that –

> "560. The prevalence of FGM in Somalia is, we find, so great that an uncircumcised, unmarried Somali woman, up to age 39, will in general be at real risk of suffering FGM. The risk will obviously be at its greatest where both parents are in favour of FGM. Conversely, where both parents are opposed to it, the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand what are, as a general matter, strong societal pressures (from both men and women) in Somalia for the procedure to be carried out on their daughter. Unless the parents are from a socioeconomic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case (such as living in a place where – exceptionally – an anti-FGM stance is taken as a whole) the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her."

43. Contrary to the grounds, I do not find that the judge misunderstood the decision in **AMM**. The Upper Tribunal did not say that there would be no risk where there were no parents who agreed to FGM; the Tribunal identified that the risk would be the greatest in a case where both parents were in favour of FGM. However, the judge considered the risk to this particular Appellant emanating from the fact that if she returned to Somalia it would be necessary had to access clan support or join a particular community in Mogadishu and it would be that which would place

her at a real risk of harm in the light of the strong pressure to undergo FGM in those circumstances. In essence, the judge was finding that in the place of parental pressure, any return to Mogadishu in the light of there being no family in which she could return to, she would have to find assistance and support from other members of society and the community who were reasonably likely to place pressure upon her to undergo FGM. The judge considered the objective material set out in **AMM** and that it was open to the judge to find that she would be at a real risk of suffering FGM were she to attempt to integrate into any particular group, clan or society in Mogadishu given the prevalence of FGM in Somalia, given that she would be an uncircumcised, unmarried Somali woman and that there were strong societal pressures in Somalia for the procedure to be carried out.

44. Where the grounds assert that the judge failed to take into account the socioeconomic background of the in-laws in which she lived, that submission fails to take into account the basis upon which the case was advanced by the Secretary of State that in fact the Appellant was not in a subsisting relationship with her partner. The grounds further assert the judge misunderstood **AM and AM (Armed conflict; risk categories) [2008] UKAIT 91** to find that being a single woman increased the risk of abduction, rape and harassment. However the grounds failed to consider that the judge's findings in the context of the evidence as a whole. The judge did not state that the Appellant succeeded as a lone female per se. As recognised, being female on its own did not necessarily establish a need for international protection but that the judge found that the Appellant would be returning without family, friends or clan support and without resources and thus the judge found that in her particular circumstances, she fell within the categories highlighted in **MOJ** and set out earlier in this determination. This also fails to engage with the basis of the refusal letter at [13] that women in Somalia form a particular social group and that at [14] the refusal letter stated "The above information indicate that lone women are at serious risk of mistreatment in Somalia as there is 'generalised and widespread discrimination towards women'". Whilst that paragraph went on to state that as she claims to be in a relationship with a British citizen the partner could return with her to Somalia to provide her with the support and therefore she would not be a lone woman, that was not the way the case was advanced on behalf of the Secretary of State, nor does it take into account the finding made by the judge that the relationship was not subsisting and thus contrary to the Respondent's case she would be a lone woman with no support.

45. In the light of the judge's findings which were open to the judge to make on the evidence before him, the grounds do not demonstrate any error of law in the decision reached. In those circumstances it is not necessary to consider Ground 6 which concern the Article 8 findings. I am satisfied that the decision of the Tribunal does not disclose an error of law and therefore the decision shall stand.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error of law and the decision shall stand. The appeal of Secretary of State is thereby dismissed.

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

Upper Tribunal Judge Reeds