



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

Appeal Number: AA/10307/2015

THE IMMIGRATION ACTS

**Heard at Liverpool
On 24th August, 2017**

**Decision & Reasons Promulgated
On 05th September, 2017**

Before

Upper Tribunal Judge Chalkley

Between

**MISS KADRA MOHAMED ABDI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

*For the Appellant: Mrs A Chaudhry of Counsel, instructed by Maya Solicitors;
For the Respondent: Mr G Harrison, a Senior Home Office Presenting Officer*

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Somalia born on 1st June 1980, who arrived in the United Kingdom on 31st March 2015 and claimed asylum on 2nd April, 2015.
2. On 8th July 2015, the respondent refused to grant the appellant asylum and also refused to grant her humanitarian protection. As a result, the

appellant appealed to the First-tier Tribunal and her appeal was heard by First-tier Tribunal Judge M Davies at Manchester on 25th April 2017.

3. The appellant claimed to be a member of the Ashraf clan from Beledweyn in South Central Somalia. She claimed to have been taken by the leader of Al Shabaab in April 2011, kept against her will and released in May 2011. She gave an alternative account that she escaped. She also claimed that she had gone to her mother's house after leaving her captors and was taken to Ethiopia the following day. She stayed with a friend of her mother's in Ethiopia and her mother initially went with her but after one or two months returned to Somalia to look after her grandmother in Beledweyn. The appellant then gave an alternative account that her mother lived in Ethiopia. The appellant claimed that she last had contact with her mother when she left Ethiopia in 2011.
4. The judge heard oral evidence from the appellant and from witnesses on her behalf but did not find any of them to be credible. The judge quite properly advised the appellant before giving evidence to listen carefully to the questions that were put to her and then to answer those questions. The judge told her that if she did not understand a question she should tell the interpreter. He advised her that he would take into account the evidence she had already given, including her witness statement and the evidence given to the respondent during her asylum interview. The appellant indicated to the judge that she understood and the judge then explained the role of the interpreter and emphasised that he was independent of the respondent and the UK authorities. She told him that she did not wish to ask any questions. A statement was submitted from Mr Abubaker Amin. It was submitted shortly before the hearing and accompanied by a letter from Manchester City Council's Chief Executive's Department describing Mr Amin as registered as a self-employed freelance interpreter for the Somali, Brava, Swahili, Bajuni and Kibajuni languages. The letter described him as being an experienced interpreter having worked for the council for over ten years and having a degree from Egypt and, "is an ex-Somali Army personnel". It is said that he was born and brought up in Somalia and has lived and worked both in Northern Somalia and in Southern Somalia.
5. The judge found the witnesses not credible and at paragraph 99 said this:-

"To summarise the appellant is not a member of the Ashraf clan. She is not from Beledweyn but is from the north of Somalia. I attach no weight whatsoever to the evidence of Mr Abubaker Amin which entirely conflicts with the findings I have made regarding the appellant. I do take into account the Sprakab Report which taking into account the appellant's lack of credibility I do attach weight to."
6. In granting permission to appeal, it was said by First-tier Tribunal Judge Grant that it was arguable that the judge may have erred in, "providing inadequate reasons for his findings and in failing to address the expert evidence placed before him as set out in the grounds". The first challenge

simply said that the judge incorrectly dismissed the evidence of the interpreter.

7. The second challenge said that the judge,

“makes no mention of the evidential weight attached to this professional evidence and indeed dismisses it totally, whereas the Sprakab Report is used by the respondent to argue that the appellant is from North Somalia. The judge makes no findings on this report other than verbally stating during the proceedings that since the interpreter was not present he would not be accommodating his witness statement, whereas he did not suggest that the Sprakab linguist needed to be present.”

8. The third challenge criticises the judge for dismissing the evidence of other witnesses, because two of them contradicted each other on whether the appellant’s brother was older or younger than her.

9. Mrs Chaudhry told me that it was a material error of law on the part of Judge Davies to dismiss the interpreter’s evidence, that being of Mr Abubaker Amin, in its entirety in the way he did. He was not present at the hearing, but it was clear that he had met the appellant and he had assessed her as being from Beletwyne in the South of Somalia. He said that the language she used is clearly and predominantly from South Somalia. Mrs Chaudhry also suggested that the judge had erred in his assessment of the witnesses’ credibility finding them not credible simply on the basis of discrepancy as to the age of the appellant’s brother. He failed to recognise that they met the appellant at different times.

10. For the respondent Mr Harrison suggested that the judge’s findings on credibility were based on the appellant’s inconsistency. He found that he could not place reliance on anything she had said. The statement of Mr Abubaker Amin was not the statement of a linguist but of an interpreter. He did not claim to be an expert and the weight that the judge attached to his statement was a matter for him. He submitted that there was no error of law.

11. I have concluded that the judge’s determination cannot stand. The judge finds at paragraph 90 that the appellant has fabricated the entirety of her claim and the three witnesses she had called had been untruthful. He noted the inconsistencies recorded by the respondent in the respondent’s refusal letter between what the appellant said in her screening interview and her subsequent interview. The appellant had not given any explanation for those inconsistencies. The judge was clearly concerned that the appellant failed to answer questions put to her, despite the fact that he had given her clear instructions that she should listen carefully to the interpreter and the question put to her and say if she had any difficulty in understanding the question. She did not indicate that she failed to understand the questions.

12. The judge also noted that she, “continued to fail to answer questions and prevaricate when she was re-examined.” He recorded that the appellant’s

Counsel repeated the advice that he had given to her about answering questions in a straightforward manner. He concluded that the appellant's account a complete fabrication and at paragraph 92 that she had fabricated her account of being kidnapped and raped by Al Shabaab and that she was from Northern Somalia and not from Beledweyn in Southern Somalia.

13. At paragraph 93 he noted contradictory evidence as to the whereabouts of the appellant's mother at the date of her screening interview and at paragraph 94 he said he did not accept that the appellant was of the Ashraf clan and that she was a member of the same clan as the witnesses who gave evidence before him.
14. Unfortunately, nowhere does the judge explain why he found that the appellant was not from the Ashraf clan. He also found that the appellant was from Northern Somalia and not from Beledweyn in Southern Somalia before actually considering the evidence of Mr Abubaker Amin or the Sprakab Report.
15. The judge then, at paragraph 95, says that taking into account his findings in respect of the appellant he then has no hesitation whatsoever in concluding that the three witnesses who gave [oral] evidence on behalf of the appellant had not given truthful evidence. He criticises Mr Mohamed as giving totally implausible evidence and noted that he had failed to answer questions in a straightforward manner. The judge recorded that he appeared to be making up his evidence as he went along and said that the appellant's brother was older than the appellant. He found that that contradicted the evidence given by Mr Affi. He claimed that the appellant's brother was older than the appellant. Mr Mohamed had said that the appellant was older than her brother. The judge attached no weight to Mr Affi's evidence either. The third witness, Mr Khanyare, gave conflicting evidence of how he knew the appellant and it appears that he had never even seen the appellant in Beledweyn.
16. It was on that basis that the judge found that the appellant was not a member of the Ashraf clan, but he has not given any reason at all for that finding.
17. He also went on to find that the appellant was from the North of Somalia and not from Beledweyn and only then does he say he did not attach any weight to the evidence of Mr Abubaker Amin, which entirely conflicts with the judge's findings, and that he did take into account the Sprakab Report, which he attached weight to.
18. With very great respect to the judge, he should have considered all the evidence before concluding that the appellant was not a member of the Ashraf clan and should have given his reasons for making that finding. He should also have considered all the evidence before finding that the

appellant was from the North of Somalia rather than from Beledweyn, but it is clear from the determination that he did not.

19. I have concluded that the determination of First-tier Tribunal Judge M Davies cannot stand. Whilst I accept that it is perfectly possible that another judge may make precisely the same credibility findings, I believe that they are unsafe since they have not been made after consideration of all the evidence in the round.
20. While Mr Abubaker Amin is an interpreter and does not claim to be an expert linguist, there are obvious difficulties with his evidence. Nonetheless, while the judge was entitled not to attach as much weight to a witness statement as he would to the oral testimony of the witness, his reasons for attaching no weight whatsoever to it simply because it conflicts with the findings he has made with regard to the appellant, is a mistake of law. He should have compared the statement of the witness with the Sprakab Report and then explained why he preferred one over the other.
21. For all the above reasons I am satisfied that the making of this determination involved the making of an error of law. I set aside the determination of First-tier Tribunal Judge M Davies in its entirety. I had given consideration to retaining the appeal in the Upper Tribunal and hearing the appeal afresh myself, but given the inevitable delays which are likely to occur if I take this course, I have concluded that the interests of justice require that I remit the appeal for hearing afresh by a judge other than First-tier Tribunal Judge M Davies.
22. Three hours should be allowed for the hearing of the appeal and a Somali interpreter should be booked. Care should be taken to ensure that the Somali interpreter is not Mr Abubaker Amin.

No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley

DIRECTIONS

I MAKE THE FOLLOWING DIRECTIONS:

- a. The appellant shall serve on the respondent and on the First Tier Tribunal a copy of all witness statements relied upon NO LATER than 21 days before the hearing of the appeal.

Richard Chalkley

Upper Tribunal Judge Chalkley

4th September 2017.