



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01190/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 21 December 2017**

**Decision & Reasons
Promulgated
On 5 February 2018**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS N O

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer
For the Respondent: Ms U Dirie, Counsel instructed by Wilson Solicitors LLP

DECISION AND REASONS

1. Although both parties made an application for permission to appeal to the Upper Tribunal and both applications were granted permission I shall describe the parties as they were described before the First-tier Tribunal, that is Ms O as the appellant and the Secretary of State as the respondent.
2. The appellant is a citizen of Somalia born on 11 October 1995 and she appealed against the respondent's decision of 16 January 2017 refusing her claim on asylum, humanitarian protection and human rights grounds.

3. The appellant arrived in the United Kingdom on 7 November 2011 without valid documentation and was refused entry but claimed asylum upon refusal of entry. Her claim was refused on 12 March 2014. Her appeal against that refusal was dismissed in a determination promulgated by Immigration Judge G J Naphthine in May 2014. In the decision, Judge Naphthine found that the appellant did not belong to a minority clan.
4. On 23 January 2017 the appellant's solicitors wrote on her behalf with further submissions which gave rise to the decision under challenge. The refusal letter by the Secretary of State relied on the previous finding of Judge Naphthine such that the appellant did not belong to a minority clan and further the decision relied on the background evidence indicating the absence of clan militias in Mogadishu and the absence of clan-based discriminatory treatment even for minority clan members.
5. The respondent also referred to the existence of the appellant's uncle, identified by Judge Naphthine's decision, and whom the appellant claimed had now relocated to Saudi Arabia.
6. The Secretary of State did not accept that the appellant was at risk of persecution in Somalia based on her gender and considered the application by reference to the country guidance case of **MOJ & Others (return to Mogadishu) Somalia CJ [2014] UKUT 00442**.
7. The appellant appealed and the matter came before First-tier Tribunal Judge Carroll who dismissed the claim on the Refugee Convention grounds but allowed the appeal on humanitarian protection and human rights grounds.
8. Judge Carroll applied the principles of Devaseelan [2002] UKIAT 00702 and cited the relevant findings of Judge Naphthine such that the appellant was over 18 when she arrived in the UK, had access to funds during her movements between Somalia, Kenya, Ethiopia and Uganda, that she would be returned to Mogadishu as an adult member and as someone who is not a member of a minority clan but who has family in Mogadishu. At paragraph 68 of Immigration Judge Naphthine's decision he found:

"I do not accept that she has no family in Mogadishu. She claimed she went there hoping to find her grandmother and brother. She found her uncle who helped her. She stated in her A1 that she had no other family there".

In sum Immigration Judge Naphthine's conclusion was that her uncle was in Somalia and that she could turn to him for support and assistance. The further submissions made and which gave rise to the decision under challenge by the Secretary of State was that the uncle had relocated to Saudi Arabia.

Appellant's grounds for Permission to Appeal

9. The grounds from the appellant in relation to the decision of Judge Carroll were based solely on the assertion that the judge erred in failing to

properly consider and to dismiss the appellant's appeal under the Refugee Convention.

10. At paragraph 30 of the decision the judge made the material and essential finding:

"I am satisfied that the appellant would be at risk by virtue of her particular vulnerabilities, including being a lone woman returnee, the length of time that she has been away from Somalia and her relative inexperience of living there, her lack of family connections in Somalia and her age"

12. The judge surmised that in the light of all the evidence there was no sufficiency of protection available for her and that she had

"shown substantial grounds for believing that if returned to Somalia she would face a real risk of suffering serious harm."

13. In view of the undisputed fact that women in Somalia form a particular social group for the purposes of the Convention (as accepted by the respondent) and the findings made by the judge that the appellant's circumstances would render her at real risk of gender-based violence, it was submitted that the appellant's claim for asylum was made out and should have been considered and allowed as the starting point.

The Secretary of State's Grounds for Permission to Appeal

14. The Secretary of State's grounds for permission to appeal were that there was a material misdirection in law and an inadequacy of reasoning. The judge's findings were confined to one short paragraph, that is paragraph 30. Although the judge accepted the appellant's uncle had left Somalia and that there was no evidence to displace the previous judge's finding (i.e. Judge Naphine) that the appellant was not from a minority clan and therefore at risk on return as a lone woman. Nowhere had the judge made findings on the support that the appellant would receive from her majority clan.

15. The judge also selectively quoted from the country guidance. **AMM & Others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445** at paragraph 631 stated:

"As a single woman with children, appellant MW would clearly be in a heightened risk category from the point of view of sexual violence, which is prevalent in southern and central Somalia. We do not, however, find that she is at real risk of Article 15(b) ill-treatment or persecutory ill-treatment by reason of having to wear oppressively heavy clothing in an Al-Shabab area. As we have found, the evidence that Al-Shabab imposes such requirements is too sporadic to give rise to a generalised real risk."

16. It was clear from the evidence that this appellant did not have children and would not need to travel onwards from Mogadishu. The Secretary of

State cited from **NM & Others (lone women; Ashraf) Somalia CG [2005] UKIAT 00076:**

“96. Whilst there are significant dangers for returnees and lone women returnees in particular these can be significantly reduced in certain cases: those who, as majority clan members, can avail themselves of the protection of the majority clan, or as a minority, the protection of a clan patron, and also those who will be accepted back into Somaliland and Puntland. The former two groups may be able to arrange in advance for militia protection from the airport onwards, through close relatives or fellow clan members. The latter group may not need to do so if returned directly to Somaliland or Puntland.

97. He was asked numerous direct questions on the issue of overall risk to returnees, lone women returnees in particular and was quite adamant in reply that majority clan protection of this type made a significant and material difference to the level of risk.”

17. Given the above it was asserted that the judge had completely failed to give reasons regarding why the appellant would not be protected by her clan membership on return to Mogadishu and why on the basis of her age alone she would be at risk.

18. The judge failed to note a key finding in **MOJ** at the headnote paragraph (viii):

“The significance of clan membership in Mogadishu has changed. Clans now provide, potentially social support and mechanisms and assist with access to livelihoods performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence and no clan-based discriminatory treatment even from minority members.”

19. No findings were made on whether or not the appellant’s uncle would be able to provide the appellant with remittances until she settled herself and she would have the availability of return packages. The judge failed to indicate whether or not there were specific vulnerabilities relating to this appellant which would place her at risk of sexual harassment or violence and why sufficiency of protection would not be available to her in Mogadishu.

20. It is clear from **MOJ & Others** that many returnees to Mogadishu have been returned after many years of absence but were still able to take advantage of the economic boom over those who had not left Somalia which had not been taken into account.

Submissions

21. At the hearing before me Mr Duffy conceded that should the findings of the judge be upheld it was likely that the appellant would be entitled to succeed on the Refugee Convention ground.

22. However Mr Duffy maintained that if the appellant was a member of a majority clan she could call for assistance from her clan and he relied on the submissions made in the application for permission to appeal.
23. Ms Dirie submitted that the previous decision of Judge Naphtine was based on the premise that the appellant's uncle was in Somalia which he was no longer. The appellant would be returning alone and that was the key. In **AMM** there were no female applicants and I was referred to the case of **FY [2017] EWCA Civ 1853** and specifically referred to paragraph 14 such that merely finding someone not from a minority clan did not mean that the country guidance precludes a finding that the length of absence and lack of family ties prevents return to Somalia. With reference to access to assistance from a majority clan in Mogadishu, now family ties were more important than clan ties.
24. Mr Duffy submitted that in this case there was no expert evidence to the effect that an individual returning to Mogadishu after a long period of absence could not expect any support from his clan. The expert in **FY** maintained that "the principal social mechanism in Somalia now is the *family rather than the clan*". This was consistent with the findings in **MOJ**.
25. **Conclusions**
26. **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)**
- (1) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.*
- (2) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.*
27. It was the respondent's position that the judge erred in failing to consider whether there would be clan support and that, irrespective of whether there was family support, there was support available for a majority clan member. I am not persuaded that the judge failed to pay proper regard to the country guidance such that the appellant would be able to safely relocate. The current country guidance **MOJ & Others (return to Mogadishu) Somalia CG [2014] UKUT 00442** makes clear at paragraph 341 that

"there was evidence from a number of sources that the importance of what has been termed the nuclear family has become more significant than membership of a clan. This was recognised by UNHCR in a report dated 20 September 2013"

and further

"It is plain that the significance of clan membership has changed and, increasingly residents of Mogadishu look to their nuclear family for support, protection and access to a livelihood. But, of course the close relatives involved would invariably also be members of the same clan that it is the family relationship rather than the clan membership that is of significance."

28. Although it was stated that the respondent did not seek to challenge the finding that the appellant would be returning as a lone woman it was the appellant's position that she had left Mogadishu with her family when she was only 5 years old and only returned in 2011 for a matter of weeks. As the judge states at paragraph 23 of her decision "*In **MOJ** there was no consideration, per se, of risk on return to lone women*" and the only consideration given to the situation of women is at paragraph 406 in the context of internal relocation.

29. As set out at 406

"for the following categories of Somalis, UNHCR would consider that an IFA/IRA will not be reasonably available in the absence of meaningful nuclear and/or extended family support and functioning clan protection."

30. The judge cites at paragraph 24 of her decision the respondent's own guidance on 'Somalia: women fearing gender-based harm/violence (August 2006)' (in fact it is 2016) which refers specifically to

"women without family or clan support and IDP women are in general likely to be at real risk of gender-based violence or serious harm on return".

31. Having considered the judge's decision as a whole, the judge clearly calls upon the relevant country guidance and specifically at paragraph 28 cites paragraph 407 of **MOJ** which sets out the factors to be considered together with any individual circumstances. In particular the judge sets out the submissions of Counsel which the judge, with some qualification, implicitly accepts:

*"29. The appellant's Counsel has carefully considered each of the factors set out in the preceding paragraph by reference to **MOJ** in paragraph 24 of the skeleton argument as follows:-*

(i) The appellant lived in Mogadishu only as a very young child before fleeing with her family in 2000 when her father went missing. She returned to Mogadishu to search for the missing members of her family in 2011. She was only able to find her uncle with whom she stayed for only a few weeks.

- (ii) *The appellant left Somalia in 2000 as a very young child and returned in 2011 for only a matter of weeks. She has not been in Somalia since then.*
- (iii) *The appellant has no family or clan associations in Mogadishu or wider Somalia to call upon. The only family member she found now resides in Saudi Arabia.*
- (iv) *The appellant has no financial resources of her own, she is unable to work in the UK and lives with her family.*
- (v) *As a young woman from a minority clan, [but see below] with no experience of working in Somalia or contacts that would be able to assist her, the prospect of her security employment and a livelihood is slim to virtually non-existent. Her prospects of finding employment are further compounded by the impending humanitarian crisis and influx of IDPs to the capital city.*
- (vi) *Neither the appellant's mother, stepfather nor distant relative... would be in a financial position to support the appellant. The appellant's mother does not work and her stepfather does not earn enough such that the family is reliant on additional financial support from the state...*
- (vii) *The appellant's travel to the UK in 2011 was arranged by her uncle who sold land in order to facilitate travel for her to reach safety. It was a one-off.*

32. What is of key significance is the judge accepts that the appellant had only been in Mogadishu as a very young child before fleeing with her family seventeen years ago, her father went missing and she only returned to Mogadishu for a matter of weeks and “*she was only able to find her uncle with whom she stayed for only a few weeks*”. Although the reference was made in counsel’s submissions to the appellant having no family or clan association, which was not accepted, it was accepted by the judge at [21] of the decision, that the only family members the appellant had found now resided in Saudi Arabia and further that she had no financial resources of her own. It was submitted that she had no experience of working in Somalia and that she had travelled to the UK in 2011 arranged by her uncle who sold land in order to facilitate travel for a one-off purpose, that is travel to reach safety. As the judge explained

30. *The appellant has, of course, not been found to belong to a minority clan and there is no further evidence before me to displace that finding. Irrespective of her true clan membership, however, I am satisfied that the appellant would be at risk by virtue of her particular vulnerabilities, including being a lone woman returnee, the length of time that she has been away from Somalia and her relative inexperience of living there, her lack of family connections in Somalia and her age. Accordingly, in the light of all of the evidence to which I have referred above, I find*

that the appellant has shown substantial grounds for believing that, if returned to Somalia, she would face a real risk of suffering serious harm and that she is unable or, owing to such risk, unwilling to avail herself of the protection of that country, in accordance with paragraph 339C of HC395."

33. It is apparent from paragraph 30 of the decision that the judge did not accept that she was from a minority clan but, irrespective of her clan, bearing in mind that the key issue is whether she has family, it was specifically found by the judge that the appellant would be at risk because she was being returned as a lone woman, having been absent from Somalia for a considerable time with the consequent inexperience of that country. Those findings were adequately reasoned and open to the judge having directed herself appropriately on the law.
34. It is clear from the jurisprudence that the issue of the nuclear family has taken precedence over the clan membership and that is evidenced from paragraph 341 of **MOJ** which I have cited above. I repeat

'The significance of clan membership in Mogadishu has changed. Clans now provide, potentially social support and mechanisms and assist with access to livelihoods performing less of a protection function than previously'.

Further, it is clear that a finding of real risk where there is a lack of family ties, albeit that the appellant is not from a minority clan, is not precluded by the country guidance.

35. **FY** accepts the changing pattern of support in Mogadishu and sets out from paragraph 13 onwards, the key parts of **MOJ** in relation to risk on return to Somalia, and specifically rejects a direction that being from a majority clan precludes a findings that it would be difficult to return to Somalia. Lady Justice Thirlwall reasons as follows

"13. The essence of the relevant country guidance is to be found at paragraph 407 at sub paragraphs (f)-(h) and at paragraph 408.

"407.

...

(f) A person returning to Mogadishu after a period of absence will 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.

(g) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assistance with access to livelihoods, performing less of a protection function than previously. There are no clan

militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.

(h) 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 of the circumstances. These considerations will include, but are not limited to:

- o Circumstances in Mogadishu before departure;*
- o Length of absence from Mogadishu;*
- o Family or clan associations to call upon in Mogadishu;*
- o Access to financial resources;*
- o Prospects of securing a livelihood, whether that be employment or self employment;*
- o Availability of remittances from abroad;*

- o Means of support during the time spent in the United Kingdom;*
- o Why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

408. Put another way, 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 as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away."

14. Mr Najib submits that having set out the guidance the FtT judge failed to apply it. He began with the written submission that having determined that FY was a member of a majority clan the FtT judge was "precluded from finding (and therefore erred in finding) that the Respondent would not be able to access help and support from his clan upon return to Mogadishu merely by reason of his lengthy absence from the same, such an argument having been rejected in ...MOJ".

15. What the FtT judge found, as part of her overall consideration of the circumstances is set out at paragraph 44

"I have not accepted that he has established he is from a minority clan. However I accept that his length of absence and lack of family ties will make it difficult for him to access help from his clan in Mogadishu and that family ties are now more important than clan ties."

Mr Najib accepted, on reflection that nothing in the Country Guidance precluded those findings."

36. Indeed **FY** guards against over emphasis on the clan membership and as stated at paragraph 16 with reference to clan membership

'But this source of assistance must not be overstated. As explained by Ms Harper, in her oral evidence, in response to a question concerning what help a returnee might expect from his clan:

"None at present. If you arrive in Mogadishu and do not know anyone at all, you might start asking for fellow clan members in the hope that they might do more for you than others. But you could not expect anything from them.

We understand that to mean that while there was no guarantee that help would be available from clan members outside the close family network of a returnee, at least there is more likelihood of such a request being accommodated than if made to those unconnected by the bond of clan membership'.

37. The judge indeed considered the individual circumstances of the appellant and accepted that she as a young woman had no nuclear family or close relatives in the city to assist her in re-establishing herself on return and that she would be at risk therefore, as a lone woman from gender based violence [24]. The judge found that her age was a risk factor. Despite a fleeting visit in 2011 for a matter of weeks she had last lived in Somalia as a very young child in 2000. The judge at [21] had already accepted, on the relevant standard of proof, which is highly relevant in this instance, that the uncle had departed from Somalia. The judge also accepted that the appellant had no financial resources of her own, was unable to work in the UK and lived with her family here. There was little prospect of her securing employment and her prospect of finding employment on the basis of her experience was 'slim' and 'further compounded by the impending humanitarian crisis and influx of IDPs to the capital city'. That, in my view, was realistically accepted by the judge. Despite the economic boom the Judge was clearly of the opinion that the appellant would be economically left behind because of her inexperience of not only work but also the country itself.
38. As confirmed in **Shizad** there is no need for expansive or extensive reasoning in a decision as long as the central issues are addressed. Where the decision as a whole makes sense, the judge has properly directed themselves on the law, and has made findings open to him/her on the evidence there will be no error of law. For the reasons given above I find that is the case here. On balance I find the application for permission to appeal and the grounds are essentially attack on and disagreement with the findings of a specialist tribunal and the weight given by the judge to the evidence. The findings were rational findings and the conclusions will stand save for the caveat below.

Notice of Decision

39. As such I allow the appeal only in terms that the judge should have allowed the appellant's (Ms O's) appeal on the basis of the Refugee Convention. I accept the appellant is clearly a member of a particular social group as she is a woman at risk of serious harm. I however dismiss the challenge by the Secretary of State for the reasons given.

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 Helen Rimington

Date 1st February 2018

Upper Tribunal Judge Rimington