



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02567/2017

**THE IMMIGRATION ACTS**

Heard at: Columbus House,  
Newport  
On: 25 May 2018

Decision and Reasons Promulgated

On: 01 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

HAM  
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellant: Mr M McGarvey, McGarvey, Immigration & Asylum Practitioners

For the Respondent: Mr C Howells, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Fowell in which he dismissed the appeal of the Appellant, a citizen of Somalia, against the Secretary of State's decision to refuse asylum and issue removal directions.

2. The application under appeal was refused on 24 February 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Fowell on 16 May 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was refused by First-tier Tribunal Judge Frankish but on renewal to the Upper Tribunal was granted by Upper Tribunal Judge Allen on 15 January 2018 in the following terms  

“In light of the judge’s acceptance that the appellant is a qualified nurse and bearing in mind what was said in the expert report and the country guidance, I consider the grounds set out an arguable challenge to the judge’s decision.”
3. By a rule 24 response dated 22 December 2017 the Respondent opposed the appeal submitting that the First-tier Tribunal Judge directed himself appropriately. Permission focuses on the narrow issue of whether it is arguable that a nurse with past involvement with government hospitals came within the enhanced risk categories identified in the Country Guidance decision. It is asserted that the decision of the First-tier Judge shows that he was aware of this issue and having assessed the Appellant’s evidence concluded that his claim did not demonstrate that he was at enhanced risk and the expert evidence was rejected in this regard.

### **Background**

4. The history of this appeal is detailed above. The Appellant is a citizen of Somalia born on 28 August 1992. He arrived in the United Kingdom on 24 September 2016 and claimed asylum on arrival. The basis of his claim was that he was abducted by members of Al-Shabaab whilst working as a nurse at a hospital in Mogadishu and subjected to forced labour. Having escaped from Al-Shabaab he was subjected to further threats from the group and eventually, after they had killed his uncle who was a policeman, the group threatened to kill the Appellant.
5. Following his asylum interview on 22 February 2017 the Respondent refused the application. The Respondent accepted that the Appellant was a member of the minority Ashraf clan but did not accept that this would cause him to be of adverse interest. The Respondent did not accept that the Appellant had been threatened by Al-Shabaab or that the other core facts of his account were true.
6. At the hearing on 16 May 2017 the Appellant was represented by counsel and gave oral evidence. The Judge dismissed the appeal finding, essentially in agreement with the Respondent’s refusal letter, that the Appellant’s account, other than his training and qualification as a nurse, was not credible and that he would not face persecution or a risk of serious harm upon his return.

### **Submissions**

7. At the hearing before me Mr McGarvey appeared for the Appellant and Mr Howells for the Respondent. Neither submitted any additional documentation.

8. For the Appellant Mr McGarvey referred to the authority of MOJ and others (Return to Mogadishu) CG [2014] UKUT 442 (IAC) and to the grounds of appeal. In a nutshell the Judge accepted that the Appellant was a nurse employed at a hospital in Mogadishu. This was the Arafat hospital which is run by the Zam Zam foundation a local non-governmental organisation. Therefore, he falls within the MOJ risk categories. I was referred to paragraph (ii) of the head note to MOJ “those associated with NGOs”. The only issue is whether this Appellant fall within this risk category. Mr McGarvey referred to the skeleton argument submitted to the First-tier tribunal and the various references therein contained to the Respondent’s Country Information and Guidance report. This clearly refers to the killing of civilians affiliated with the government and to NGO employees.
9. For the Respondent Mr Howells referred to the rule 24 response. The enhanced risk categories include “those associated with NGOs and international organisations”. The Respondent does not accept that the Appellant would fall within this category. The expert report from Mary Harper deals with this at 5.1. His claim is that he trained and did a work placement in a hospital, he did not work there at the material time. He worked for the NGO between April 2010 and May 2011. He also did placements at two other hospitals following this. He was not a government official.

### Decision

10. The grounds of appeal to the First-tier Tribunal are split into four subheadings. It is asserted that the Judge failed to apply the law adequately, that he failed to apply Country Guidance, that his decision was perverse, irrational or failed to give adequate reasons and that he failed to adequately consider expert evidence. Permission to appeal having been refused the renewed grounds of appeal to the Upper Tribunal raised only one ground, failure to follow Country Guidance coupled with irrationality. The grant of permission focusses on this single issue being whether it being accepted that the Appellant was a qualified nurse the Judge had failed to adequately follow County Guidance and the expert evidence. Mr McGarvey’s submissions addressed only this issue.
11. The simple proposal is that the Appellant’s qualification and employment as a nurse causes him to be at risk because a nurse is a person associated with an NGO (or potentially the government) and MOJ holds that such persons fall within an enhanced risk category.
12. MOJ deals with enhanced risk categories in the headnote and at paragraph 407
  - a. Generally, a person who is “an ordinary civilian” (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 15(c) of the Qualification Directive or Article 3 of the ECHR. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al Shabaab or by Al Shabaab as an apostate or

someone whose Islamic integrity has been compromised by living in a Western country

- b. ...
  - c. The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab's resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.
13. The first point of note must be that MOJ does not, as submitted by Mr McGarvey, hold that those associated with the government or an NGO are at risk rather it holds that those not associated with the government or an NGO are not in general at risk. It is an important distinction because MOJ seeks to define 'safe' categories rather than 'at risk' categories and it cannot in my judgement be correct to make a blanket assumption that a person not falling within a safe category is automatically in an at-risk category. Paragraph 407.c. does not detract from this referring as it does to the impossibility of establishing the level of casualties within generalised target groups.
  14. It follows that it was imperative for the Judge to consider the Country Guidance case of MOJ and in doing so assess whether the Appellant, by virtue of his status as a nurse would be at risk. There can be no doubt that the Judge was alive to the issue. He refers to MOJ at paragraph 12 quoting from the headnote and again at paragraphs 17, 21, 42, 54, 55 and 56. It was of course also imperative that the Judge considered the evidence and in doing so the expert report submitted on the Appellant's behalf. The report came from Mary Harper and again it is clear that the Judge was alive to the contents of the report referring to it at paragraphs 15(b), 17, 42, 46, 54, 55 and 56 as well as quoting extensively from the report at paragraph 18.
  15. The Judge gives extensive reasoning before reaching the conclusion that the Appellant is not a credible witness so far as the core aspects of his claim to have been persecuted are concerned. The Judge's finding in this respect is not challenged in the grounds of appeal to the Upper Tribunal and it is of course this adverse credibility finding that informs the Judge's decision about the risk to the Appellant as a nurse. The only positive finding made about the Appellant's credibility is to be found in paragraph 53 of the decision. That is that the Appellant is a qualified nurse who graduated in 2012 and who worked at Arafat Hospital from 2010 to 2011 during his training.
  16. Having referred to the Country Guidance case of MOJ and the expert's report extensively the Judge considers at paragraphs 55-57 whether a nurse falls within a category of potential targets identified within MOJ and comes to the conclusion that it does not. Mr McGarvey, in effect, suggests that such

conclusion is irrational. In my judgement it is not. MOJ gives very general guidance, “government officials and those associated with NGOs...” without giving any clear definition of what a “government official” may be or what constitutes an “association” with an NGO. There is perhaps some clarification of the guidance at paragraph 404 of MOJ

“Our conclusion that there is an absence of an Article 15(c) risk is based upon a person who is an “ordinary civilian”. A person who works, for example, as a police officer, a government official, or in any capacity for the security forces or the government administrative machine will not be an “ordinary citizen” and he will experience a higher level of risk, even if not individually targeted on that account, because his daily life will bring him to the very areas of the city that are subject to an enhanced likelihood of being selected as a target for an Al Shabaab attack. But given what we have said about the opportunities to access other means of securing a livelihood, a person who works in a capacity of the type described, which brings with it an enhanced level of risk, will have done so as a matter of choice. That choice will have been informed by his overall circumstances, including his personal security arrangements that may relate to the means of travelling around the city and to his place of residence and the level of security in which he is able to live.”

17. An ordinary civilian will not be at 15(c) risk but a government official or someone who is part of the government administrative machine may be but whether or not he is will need a careful assessment of his overall circumstances (paragraph 405). A person who falls into one of these categories is not automatically at 15(c) risk. The Elgafagi sliding scale will apply.
18. Turning to the Appellant’s overall circumstances the adverse credibility finding made cannot be avoided. The only relevance of his personal circumstances to the sliding scale is that he trained and qualified as a nurse. Nothing further was put forward by Mr McGarvey. The fact that during his training he worked at a hospital run by an NGO does not in my judgement establish a close connection with an NGO still less a connection that causes him to face an enhanced risk on the Elgafagi scale. No argument was put forward as to why this might be the case. The only argument was that the Appellant was at enhanced risk because he was a nurse. In this respect it is perhaps pertinent to note Ms Harpers collation of information recorded in MOJ as it relates to hospitals at paragraph 380

Ms Harper collated the information available from the WHO supported hospitals:

January – December 2010: 5279 casualties from weapons related casualties were treated at the three major hospitals in Mogadishu

January – December 2011: 9689 casualties from weapons related casualties were treated at the three major hospitals in Mogadishu

January – December 2012: 6687 casualties from weapons related casualties were treated in four hospitals in Mogadishu

January – October 2013: 3889 casualties from weapons related casualties were treated in four hospitals in Mogadishu

19. This is detailed statistical information on the treatment of casualties at hospitals in Mogadishu supported by the World Health Organisation (an NGO) with no suggestion that hospitals are targeted or that hospital workers are targeted. Ms Harper's report for the purposes of these proceedings quotes from MOJ at paragraph 5 and refers to the Elgafagi sliding scale at paragraph 6 and in doing so suggests that the Appellant's employment at an NGO operated hospital and his association with health facilities linked to the government and international and local NGOs would place him at risk but nowhere does she give a single example of a health worker, health facility or hospital being targeted.
20. In his decision the Judge considers the Appellant's personal circumstances. Having found his account not to be credible in most respects and having considered in detail the Country Guidance case of MOJ and the expert report of Ms Harper he finds that the Appellant is not at risk of persecution and that his status as a nurse does not put him at enhanced risk. The Judge does not mention Elgafagi but there is in my judgment no need for him to do so given these findings. The findings are sustainable, they are made after consideration of the Country Guidance case and the expert report and in my judgment the findings do not run contrary to the Country Guidance case and are rational taking into account the Judge's assessment of the Appellant's personal circumstances. There is no error of law.

**Summary**

21. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the appeal.

**Signed:**

**Date: 25 July 2018**



**J F W Phillips**  
**Deputy Judge of the Upper Tribunal**