



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

Appeal Number: UI-2021-001000  
PA/50406/2020; IA/00056/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 October 2022**

**Decision & Reasons Promulgated  
On 27 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**ZM  
(ANONYMITY ORDER IN FORCE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Ferguson, Counsel instructed by Freemans Solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer  
Interpreter: Mr A Dirie interpreted the Somali and English languages

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. I make this order because the appellant seeks international protection and publicity might endanger her safety in the event of her return to her country of nationality.
2. This is an appeal by a citizen of Somalia born, on 1 January 1989, against the decision of the respondent refusing her protection claim and human

rights claim on 25 November 2019. The appeal was heard first by the First-tier Tribunal and dismissed on all grounds. The decision of the First-tier Tribunal was challenged before the Upper Tribunal and Upper Tribunal Judge Gill upheld much of the decision but found fault in the First-tier Tribunal's consideration of the appellant's claim under Article 8 of the European Convention on Human Rights and set aside the decision insofar as it related to the Article 8 claim and only to that extent. It is the feature of the case that the appellant left Somalia to travel to the United Kingdom intending to reunite with her partner who has been recognised as a refugee in the United Kingdom.

3. I have decided to set out in full Upper Tribunal Judge Gill's reasons for finding that the First-tier Tribunal erred in law in its consideration of the implications of Article 8 of the European Convention on Human Rights. They are, if I might respectfully presume to comment, clear and I risk making them less clear if I attempt to summarise them.

4. Judge Gill said:

"53. Ms Ferguson also relied upon the fact that the appellant's partner was granted refugee status in the United Kingdom. Neither party at the hearing referred me to AB (DRC) v SSHD [2007] EWCA Civ 1422, paras 20-22 of which (insofar as relevant) read:

'20. ... We are referred by Mr Johnson to a decision of the Immigration Appeal Tribunal presided over by the president (Ouseley J) in SS v SSHD [2004] UKIAT 00126. In that case the appellant and her husband were citizens of Sri Lanka. The husband had been granted indefinite leave to remain several years earlier in different political circumstances from those which obtained at the time when his wife's claim was being decided. The tribunal was aware from its own knowledge that there had been a significant change in the situation since the appellant's husband had been granted indefinite leave to remain, and it rejected the argument that his refugee status was nevertheless to be taken as raising an insurmountable obstacle to his return.

21. It is for an appellant to establish a claim under article 8. A third party's refugee status may be relevant to such a claim. Where an appellant asserts that there would be an insurmountable burden to that person returning to his or her country of origin, and relies on his or her established refugee status to support that proposition, in my judgment the starting point for a tribunal should be to take it that the person concerned could not reasonably be expected to return to his or her country of origin unless it has some basis to suppose otherwise. **A reason to suppose otherwise may come from the tribunal's own knowledge (as in SS v SSHD) or from the material placed before the tribunal by the respondent.** This is not to place a legal burden on the respondent. It is merely to recognise that, in the absence of any reason to suppose otherwise, it is natural to conclude from a third party's grant of refugee status that it would be unreasonable to expect that person to return to his or her country of origin. I do not consider that a different approach should apply merely because refugee status was

granted to the third party as a dependant of another. As this case demonstrates, that may or may not be material but only the details of the case will show.

22. There are reasons of fairness and practicality for taking this approach. As Sedley LJ observed in granting leave to appeal, the Home Office will hold the record showing the details why a person was granted refugee status. **If there has been a change in conditions in the relevant country in the interim, that is a matter which either the tribunal will know about or the respondent will be able to raise.** I do not see justice or practical benefit in adopting an approach which would make it incumbent on an appellant in every case to re-prove the third party's original entitlement to refugee status, or to prove its basis or to adduce positive evidence that there has been no subsequent material change (particularly since in many cases the respondent might not seek to suggest otherwise).'

(My emphasis)

54. The appellant's partner was granted refugee status in January 2002. The situation in Mogadishu for minority clan members (even assuming that he is a minority clan member) has changed significantly, as MOJ makes clear. Nevertheless, the guidance in AB (DRC) v SSHD should have been applied. Neither party at the hearing before the judge referred him to AB (DRC) v SSHD. As a consequence, the judge erred by failing to apply AB (DRC) v SSHD, albeit through no fault of his own.

55. I am therefore satisfied that the judge did materially err in law in his consideration of the appellant's Article 8 claim.

56. For the reasons given above at paras 53-55 above, I set aside the decision of the judge to dismiss the appellant's Article 8 claim. For the reasons given above at paras 22-47 above, his decision to dismiss her asylum claim, her humanitarian protection claim and her related Article 3 claim shall stand.

57. The ambit of the re-making of the decision on the appellant's appeal against the respondent's decision is therefore limited to her Article 8 claim. The judge's findings at paras 31-33 and his finding that the appellant has not lost contact with her mother, sister and children in Somalia and that she would not be returning to Somalia as a lone female stand.

58. If reliance is to be placed on the mental health condition of the appellant's partner, the appellant would be well-advised to submit an up-to-date psychiatric report.

59. The parties will be expected to address whether there are insurmountable obstacles to family life between the appellant and her partner continuing in Somalia in light of the country guidance in MOJ and the decision in AB (DRC) v SSHD. The mere fact that her partner is not willing to return to Somalia is not determinative.

60. In addition, the parties will be expected to address the possibility of the appellant returning to Somalia to make an entry clearance application in order to join Mr O A as his partner, including whether it is open to the appellant to request the respondent to exempt her from

complying with the English language requirement on the ground that she has not had the benefit of a formal education”.

5. Judge Gill then gave directions and indicated there should be a Case Management Review hearing and, following that hearing, Upper Tribunal Judge Norton-Taylor gave directions. These included directions concerning the provision of bundles and skeleton arguments in electronic form. The hearing that had been “pencilled in” for 5 August 2022 was vacated and Judge Norton-Taylor ordered that the resumed hearing be listed on the first available date after eight weeks (his order is dated 15 July 2022). Importantly, although almost certainly not strictly necessary, the directions included under (4) the observation “With liberty to apply to vary these directions”.
6. The point is that Judge Norton-Taylor’s Directions were intended to give the parties time to do what had to be done to prepare the appeal for hearing and the parties were reminded that it was open to them to ask for the Directions to be varied, strictly for any reason, but presumably if for some good reason the ordered timetable was not sufficient.
7. The case was listed before me for hearing on 5 October 2022. That was a Wednesday. On, I think, the previous Friday I was asked by letter to adjourn because the appellant’s representatives were not ready. I refused that application. I accepted that the appellant’s representatives had applied for legal aid funding and did not know until 26 September that legal aid funding was not available. I do realise that it can be difficult for solicitors to obtain legal aid and that the authorities that administer such applications are not particularly interested in timetables imposed by the Tribunal. I do not understand why solicitors who are awaiting public funding do not take steps to ask the Tribunal and the respondent for an adjournment to enable funding to come through sometime before the hearing date. It must have been obvious well before 26 September that whatever funding was available was not going to lead to the desired reports.
8. As she was absolutely entitled to do, Ms Ferguson renewed orally the application for an adjournment. Mr Melvin opposed the application. I refused the application and I gave my reasons. I said:

“Upper Tribunal Judge Gill gave a very clear indication of the scope and purpose of the renewed hearing when she gave her reasons for finding an error of law. Since then there has been a Case Management Directions hearing. The appellant’s solicitors wanted to arrange further evidence but they have not been able to do that. I accept that they did not know until 26 September 2022 that funding was not forthcoming but I do not understand why, that being the case, the adjournment application was not made much sooner than Friday 29 September. If it had been made earlier the hearing room time set aside for today could, possibly, have been used for something else. I have to be fair and fairness includes fairness not only to the parties before me but to those whose cases are delayed by reason of space having to be made for a case that should have been heard. Despite Ms Ferguson’s best efforts I have little idea what the expert evidence might say about country conditions generally. The appellant has been given a good opportunity

to flesh out her case on Article 8 grounds considering how her husband can manage without her in the United Kingdom or cope in Somalia. Not only is there no expert report available but no detailed statements have been prepared. I see no merit in giving a further opportunity.

9. I then said that the case would proceed.
10. Ms Ferguson asked me to direct that both the appellant and her husband were vulnerable but had no detailed proposals about what that meant in terms of conducting the hearing. It was thought more than ordinarily appropriate for questions to be clear rather than compound and, obviously, that both witnesses should be shown considerable patience because there was some evidence of mental health problems.
11. Ms Ferguson called the appellant to give evidence. The appellant was away from the hearing room using a telephone to maintain links with the Tribunal and I found arrangement this to work entirely satisfactorily. She said that her husband was outside the room where she was sitting to give evidence.
12. The appellant adopted the witness statement at pages P1-P4 in the bundle. Although the statement itself is signed there is nothing to indicate that an interpreter actually translated it for her. The statement is dated 29 September 2020.
13. Given the limited scope of the hearing, I see no point in outlining all of the statement but I will summarise the relevant parts.
14. There the appellant identified herself as a member of the Reer Hamar clan which she described as a minority clan in Somalia. She said she was born in Mogadishu and is a citizen of Somalia. She has stated that her safety would be at risk if she returned to Somalia. Her father was killed in a bomb explosion in 2017. Her uncle had been killed by majority clan members while trying to protect her and she was raped. She had no support or counselling after her rape because “there is no such thing in Somalia”. Her mother had died. She thought her mother had died in part because of the horror of knowing what her daughter had experienced.
15. She said her husband would struggle financially to support her due to his own financial situation. He was unemployed and could not work because of long term illness. He did send money before she travelled to the United Kingdom. It did not come every month. He was on Employment and Support Allowance from the government.
16. She gave a detailed account of how she was attacked at the age of 13 by majority clan members and raped. She said that she suffered from symptoms of trauma and had suicidal thoughts. She had been referred to a counsellor by her doctor. She claimed that she was at risk of constant abuse from majority clan members.
17. In answer to supplementary questions she talked about her husband’s difficulties. It is accepted that her husband suffers from post-traumatic stress disorder. She said that he was unable to cook. He left the fire turned on and generally was not safe. She said that he could not be trusted to go out on his own and return safely. He needed somebody with

him all the time. He also had medication and needed someone to monitor that medication.

18. She was asked if she had an example of what might happen if he ever left the house. She found it a hard question to answer but did say that about two months before the hearing she was with her husband when he tried to throw himself under a train. She was able to prevent that but she worried about repetition of that kind of behaviour. She said that she had to “grab him and hug him”.
19. She indicated that her husband took medication and produced packets of tablets which she said were prescribed to her husband. He has care from a mental health team and a consultant psychiatrist and sees a medical practitioner about once a month. These tablets had been dosage increased recently.
20. She said she had not told the medical practitioners that her husband had tried to jump in front of a train. She said that her husband had threatened her that if she told the doctor “I will kill you”. I did not understand this to be a serious threat by her husband to take her life but rather it was a hyperbolic expression of the extreme abhorrence he felt at the idea of the medical practitioners being informed. She said that her husband was frightened that if the authorities knew he had tried to take his life he would be locked up in a secure hospital and he could not face that.
21. She said that as far as she knew her husband had never worked in the United Kingdom.
22. Her husband had visited Somalia twice after he had come to the United Kingdom. She claimed to be unable to remember dates with any precision but recalled visits in 2014 and 2017. On the occasions (I understood the witness to mean *both* of the occasions) that he visited he stayed for about two months in the country but remained indoors.
23. She did say where they had stayed. They stayed in a family home in a district of Mogadishu.
24. The appellant was cross-examined.
25. She insisted that her husband had not been able to look after himself since she arrived in the United Kingdom. She said “I can see in his eyes he needs help”.
26. He was on medication when she arrived and had continued to take medication.
27. Somebody travelled with him when he came to Somalia in 2017.
28. She had medication for her own mental health problems and produced a packet of tablets which she said had been prescribed to her. She had been on tablets for about a year.
29. She was cross-examined on the basis that she had not said at a previous hearing that she was taking medication. She said that she had.
30. She denied that she was exaggerating her and her husband’s condition to assist the claim.

31. She claimed not to know any family in Somalia. She had attempted to contact her family. She had not asked the Red Cross. She said "I don't know about the Red Cross". She insisted she had not told the medical advisers that her husband had tried to take his life.
32. She was not re-examined.
33. I note that she said in her statement:

"I did not know that I could seek the help of Red Cross to find my family. I am looking into this option as I would like to find my children and mother".
34. The appellant's husband, who I identify as "OA", gave evidence. He adopted a statement dated 1 October 2020. As was the case with the appellant's statement, provision was made for it to be endorsed by a translator but there was no mark there. Nevertheless, he indicated that he was happy to be bound by that statement.
35. In his statement he explained that he is now a British citizen but he was born in Somalia and was recognised as a refugee in the United Kingdom. He has visited Somalia on two occasions since becoming British. He said his visits were short because he did not feel safe there.
36. He said he met his wife in 2014 in Somalia. He knew his wife was a divorcee. They "quickly married" and formed a life together. They married on 21 December 2014. After the wedding he returned to the United Kingdom to continue his life but kept in touch with his wife and regarded her two children from a previous marriage and her adopted daughter as part of his family. At paragraph 7 he said:

"My wife and I previously tried to apply for entry clearance to the UK so that she could join me here. We did not go ahead with this application because my wife would never pass the English language requirement. She is not educated and never had an opportunity to go to school because of the situation in Somalia and the treatment of minority clan members".
37. He said he sent money to his wife irregularly but as he could afford to send it. He had not been in employment for several years because of his ill health. He had a long term mental health condition. His only income was employment support allowance.
38. He said that in the event of his wife being removed to Somalia he "would do everything to help provide for her, I realistically will not be able to afford it".
39. He then said that his wife would be in danger in Somalia. Her mental health would deteriorate and that would add to his anxiety.
40. He gave evidence through an interpreter adopting the statement I have outlined.
41. He said he had never been able to work in the United Kingdom. He had been left sick as a result of his experiences in Somalia. He said his mental illness affected him by him having "problems with my brain". He illustrated it by saying he could not use a cooker.
42. He suffered from post-traumatic stress disorder and he needed support.

43. He also knew that his wife was suffering from depression mainly, he thought, because she was worried about not knowing the whereabouts of her children and other relatives. He remembered going to Somalia and he had travelled with a friend. He had medication that would help him “calm down”.
44. He was cross-examined.
45. He denied hearing his wife give evidence.
46. He said he was taking tablets but did not name them. He could not name the doctor that he said he saw every month. He confirmed it was his case he could not manage without his wife. He was asked how he had managed before his wife came to the United Kingdom in 2019. He said members of the Somali community helped him. There was no supporting evidence for this claim.
47. When prompted he said he did try and jump under a train but had not told his medical advisers about the incident. He was afraid to tell them and told his wife not to tell anyone. He denied exaggerating his symptoms. He said he did not know about the Red Cross as a possible way of contacting lost relatives in Somalia.
48. He was re-examined.
49. He indicated where he had stayed on his visit to Somalia. This evidence appeared to match closely the evidence given by his wife on that point.
50. That was the end of the oral evidence before me.
51. I have considered the material before me including the refusal letter.
52. The refusal letter is equivocal about the appellant’s relationship with her putative husband. He is described in the letter as her “husband”, however the letter says that she relied on an Islamic marriage certificate and photographs of the wedding but “you have not provided evidence that you are in a marriage with [OA] as recognised by UK law. In view of this, it is not accepted that you meet the definition of a partner as defined in GEN.1.2.”.
53. Further, it was not accepted that the relationship with the partner was genuine and subsisting because there was not then two years’ cohabitation. The letter is dated 17 June 2020.
54. The First-tier Tribunal in its Decision and Reasons did not decide unequivocally if the appellant was in fact in a genuine marriage but did express surprise at the apparent ignorance of the appellant’s purported husband of her intended, unsuccessful trip to the United Kingdom and also the modesty of financial contributions. This part of the evidence was not resolved by the First-tier Tribunal.
55. The medical documents in the appellant’s bundle are somewhat dated now but they merit consideration.
56. There is a letter from the general medical practitioner dated 19 February 2020 written from a health centre in Essex. It identifies the appellant’s purported husband. I see no point in repeating every point that is made



there but mental health problems were identified in January 2012 and post-traumatic stress disorder was identified in 2019, 2013, and 2012 and depression in 2010. Drugs were prescribed including Fluoxetine, Olanzapine and Promethazine Hydrochloride. I understand that all these drugs are commonly used in treating a depression and its symptoms.

57. There is also a letter dated 5 April 2016 to the “psychiatric liaison team” where the appellant was complaining of post-traumatic stress disorder, recurring dreams and the medication not working. He reported suicidal ideation.
58. There is a letter from the North East London NHS Foundation Trust dated 29 October 2014 written in support of problems he was having with housing but the letter reporting that he presented with post-traumatic stress disorder attributed to events he had witnessed in his native country from 1997 onwards.
59. There is also a letter from the Department of Works & Pensions dated 19 March 2020 saying how the appellant was receiving Personal Independence Payment then in the weekly sum of £59.70 and, as I read the letter, an exactly similar sum as a “new daily living amount”.
60. There is a letter dated 30 January 2020 dealing with a claim for Employment and Support Allowance. Amongst other information this says how the “PIP daily living component” is not counted as income towards the Employment and Support Allowance.
61. There is also background material which I do not propose to consider at this point.
62. Mr Melvin had served a “preliminary skeleton argument” dated 25 July 2022. This notes how the appellant arrived in the United Kingdom on 12 November 2019 and claimed asylum on 25 November 2019. This emphasises how following Judge Gill’s order the findings “made in relation to the contact between the appellant, her mother, sister and children in Somalia shall stand as will the finding that she will not be returning as a lone female”.
63. I have Ms Ferguson’s skeleton argument from the hearing in the First-tier Tribunal dated 16 April 2021. Much of this is not relevant because of the findings that had been established but I do note her assertion in there, which I understand to be correct, that the appellant does not have to show that her husband earns a prescribed sum in the event of her applying for entry clearance as his wife because he is in receipt of Personal Independence Payment.
64. I found paragraph 4 of the skeleton argument particularly helpful. There Ms Ferguson said:

“In terms of Article 8, it is submitted the appellant is legally married to her husband who is present and settled in the UK. He is in receipt of PIP which means he is considered to meet the MIR and it is submitted EX1(b) does exist, very significant obstacles to family life continuing in Somalia: he is a refugee with depression and PTSD; in 2016 he was referred for urgent psychiatric consultation due to ‘suicidal ideation, regular basis and real risk,

plan in place' [AB14]. This is because of his experiences in Somalia; it is respectfully submitted very significant obstacles to his relocate there exist on account of his past mistreatment, the impact of his mental health condition, minority status, inability to work and support his wife, her inability to work as a minority female etc."

65. I also confirm that I have considered the Country Policy and Information Note on Somalia "Security and humanitarian situation in Mogadishu", version 1 published in May 2022. Ms Ferguson did not have a copy of this but provided me with an electronic link which, I confirm, worked.
66. I remind myself that I am concerned with an Article 8 balancing exercise. It is for the appellant to prove the facts on which she relies on the balance of probabilities and for me then to carry out a balancing exercise independently while having regard to the submissions of both parties.
67. I did not find either the appellant or her husband to be satisfactory witnesses.
68. Mr Melvin cross-examined the appellant's husband on the basis that he had overheard his wife's answers. Mr OA denied that but there were two parts of the appellant's evidence and husband's evidence that concern me in the light of this challenge. The description they gave of the accommodation in Mogadishu during the 2017 visit was so similar it suggested rehearsal rather than recall. Further, and much more importantly, I was very troubled by the evidence they each gave about the appellant's husband's alleged attempted suicide. They were not cross-examined intensively as Mr Melvin was no doubt having regard to the fact that they were both regarded as vulnerable people and was showing some circumspection. Nevertheless, the appellant is much smaller than her husband. The idea of her being able to restrain him in the event of a serious attempt to throw himself under a train is hard to understand.
69. I also find it utterly astonishing, and unbelievable, that both the appellant and her husband were willing to tell me that this incident had taken place but were not willing to tell the medical advisers. I do appreciate the appellant's husband's assertion that he does not wish to be subject to "sectioning" as a mental health patient. I accept as well, although this was not relied upon expressly by the parties, that there are deeply held prejudices in some strata of society against admitting to suicidal behaviour.
70. Nevertheless, it is the appellant's case that he is likely to engage in such behaviour if unsupervised so that his wife must, contrary to the ordinary requirements of the Rules, be allowed to remain with him to offer protection and it is her case that she agrees there is that need and is willing to remain in the United Kingdom to provide it. They are in contact with psychiatric workers on a monthly basis. I do not believe that they would not have told the authorities of a serious suicide attempt. Even if the initial reaction was discretion, if the attempt was serious and the appellant really believes that removing her would leave her husband at risk of taking his own life, she would not have refrained from telling the medical advisers. Further, it makes no sense that the appellant would

make such a claim before me but not those most able to help her husband.

71. I do not believe that the appellant's husband tried to kill himself.
72. Nevertheless, I am entirely satisfied that there is a genuine history of ill health. I take Mr Melvin's point that there is no direct evidence of recent prescriptions and the boxes of medication that were produced and shown to the video camera did not necessarily were not necessarily given to the people who produced them and were not necessarily freshly dispensed. I am dealing with probabilities. The idea that the appellant's husband was in receipt of medical support because of depression was well established in the case. It was not a new invention. I do find it probable that the appellant and her husband are, as they each claim, ill and they were producing the medication that had been prescribed to them. They are not gravely ill but they are in need of support.
73. I also remind myself that the medical evidence is quite old and the appellant has only been in the United Kingdom since 2019. The fact is the appellant's husband can manage without her. He is undoubtedly more content with her and she is willing to support him but she is not strictly needed. She would be very useful but that is a different thing. The appellant's husband has managed without her before at a time when his ill health was clearly established. He can manage again.
74. I am not persuaded the appellant's husband can be expected to return to Mogadishu. He has been there twice. They were for short visits, both at times when there was an expectation of returning to the United Kingdom. I am entirely satisfied that he suffered from post-traumatic stress disorder. I am not persuaded that there is any danger external danger to him in the event of his return now. Country guidance cases point to an improvement in conditions but I am satisfied that he cannot be expected to return to a country where he was so badly treated that he continues to suffer from post-traumatic stress disorder now many years after he left.
75. I also recognise and accept the evidence the appellant is in receipt of PIP payments. Mr Melvin cross-examined the appellant on the basis that he was exaggerating symptoms and essentially relying on benefits to which he was not entitled. There is no justification for that except that it fits the Home Office's case. I do not believe that benefits of the kind described here, or at all, are handed out carelessly. There must have been proper reasons when the payments started to consider the appellant was in need of daily care and not able to work. He is a poorly man but, as indicated, he has managed before and can manage again. Nevertheless, it is going too far to say he must go back to Mogadishu even if he would be well supported there by family, something that he denies but something that he failed to satisfy the First-tier Tribunal about when he gave evidence.
76. The Article 8 balancing exercise then really comes down to the appellant returning without him. She could do that. I am quite unpersuaded that she is at any kind of risk in Mogadishu. I think it likely she would prefer to be with her husband for his sake and also for hers. However, I see no

reason why she cannot return and prepare a careful application to join her husband which may succeed.

77. I have considered Ms Ferguson's submissions at various stages in my analysis. As has been clearly established the appellant has conducted herself in such a way that makes it hard to accept anything she says and she has not established any evidential basis for concluding that she would personally be at risk in Mogadishu or elsewhere in Somalia. This extends to risk of humanitarian protection. It might be (I put it no higher than that) that she would have to face slightly higher risks than the ordinary citizen whatever that might be because of her lack of social standing and economic circumstances. There is a lot of speculation in that suggestion given that not much is known about what she has done or where she would go back. I do not accept that she has shown that there is a real risk that she would face a need for humanitarian protection.
78. I am persuaded that she can return to Mogadishu. She has been raped there and that is, obviously, a bad experience of a very high order but it was followed by a prolonged period of no further threats. This is not a case where, for example, post-traumatic stress disorder has been clearly linked by diagnosis to anything that may have happened to her there and there is no reason why she cannot go back.
79. My concerns turn solely on her relationship with her husband. Ms Ferguson had to accept that this is not a "**Chikwamba**" kind of case. The appellant cannot satisfy the requirement of the Rules. Even if the marriage is established she has not made the necessary success in learning the English language. This is a concern that she claims to have raised in her interview and features in correspondence from her solicitors to the respondent.
80. Nothing seems to have been done in the response to Judge Gill's clear direction that the Home Office should be approached to see if this is a case where they might waive reliance on that part of the Rules.
81. I have addressed my mind firmly to Part 5A of the 2002 Act. This is not a deportation case. However, it is in the public interest to uphold the Rules and so maintain effective immigration control. It is in the public interest that an applicant can speak English and this appellant cannot. This is not a strong point but it is a negative point.
82. Given that her husband's benefits excuse her from showing that he has the necessary earning power I find the financial circumstances to be neutral.
83. The evidence that there is in fact a legally recognised marriage here is not very good. There is enough evidence to create the suggestion but nothing has been done in the light of clear finding by the Entry Clearance Officer that there is no partnership and the judge's rather equivocal findings which certainly fell short of an acceptance that a partnership had been established. There is much that could have been done. The appellant could have led expert evidence about the marriage certificate and the effect it would have in Somali law. The appellant and her putative partner

could have married in the United Kingdom. Nevertheless, and without being convinced, which I do not have to be, I am persuaded there is at least probably a subsisting life partnership here. Something was motivating the appellant to come to the United Kingdom and meet up with her putative husband. She says it was their marriage and there was no proper reason to reject that except general weakness in the case and I find there is probably a relationship akin to marriage based on some years of cohabitation. I do not know if the appellant and her partner went through a marriage ceremony in Somali as they claim and I do not know the legal significance of such a ceremony. Nevertheless, it follows that there is family life and that requiring the appellant to leave the United Kingdom will interfere with her and her husband's private and family life and the interference will be at the "family life" end of the continuum. There are no children to consider.

84. As indicated above, I find it "unduly harsh" to expect the appellant's husband to return to Somalia and settle there. It would also be "unreasonable". He needed protection from conditions in the country and his experiences have left indelible scars so that he remains unfit for work. It is, I find, a very border line case. I recognise that has returned to Somalia for holidays on two occasions but I accept his evidence that he returned in the confident (and correct) belief that he was entitled to return to the United Kingdom. I accept too that he benefitted from the support of friends throughout that visit. It does not follow that support would be forthcoming in the long term.
85. It may be that he would benefit from the family support that is available to the appellant but, in my judgement, the clear diagnosis of Post Traumatic Stress Disorder just tips the balance, taken with the other evidence, in favour of concluding that the appellant's husband could not cope.
86. I am not persuaded that it would be unduly harsh to require the appellant to leave the United Kingdom and make a properly prepared application for entry clearance.
87. She will be safe in Somalia because she has family support. Her husband has managed without her and will so manage again. He would like her support in the United Kingdom but he can do without it as has previously been the case. There will be disappointment and frustration but it will only revert the appellant's husband to the pre-1999 position which was manageable.
88. The appellant would miss her husband and prefer to be with him. The answer to her problem is to organise her affairs so that she satisfies the requirements of the Immigration Rules. I have huge personal sympathy with people who find it very difficult to learn a language that to them is foreign but the United Kingdom has decided to make that requirement and the appellant has given no good reason to be excused it. It may be that, with proper instruction, she could reach the modest minimum standard that the rules require. There is no good evidence before me that her professed fear of testing is well founded or that she is as incapable of learning English as she claims. Alternatively, a properly presented case

from outside the United Kingdom *might* persuade the respondent to make an exceptional concession or may lead to a powerful claim on human rights grounds.

89. There are strong public policy reasons for husband and wife to live together but they are not determinative. The appellant travelled to the United Kingdom irregularly to pursue an asylum claim that was essentially dishonest. Her removal will cause significant interference with her and her husband's family life but it is proportionate. The appellant has not availed herself of the route provided by the Rules or argued that she is an exception within the Rules and it is open to her to do that. In the meantime although her husband would miss her he can manage without her.
90. Pulling all these things together I find the appellant has not availed herself of the opportunity created by Judge Gill's careful consideration of the case and directions (if I may respectfully describe them) and I dismiss the appeal.

**Notice of Decision**

91. This appeal is dismissed.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 19 October 2022