IAC-UT

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/03282/2015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 11 February 2016** | **On 21 March 2016** |

**Before**

**Mr H J E LATTER**
**(DEPUTY UPPER TRIBUNAL JUDGE)**

**Between**

**[N K]**
**~~(ANONYMITY DIRECTION NOT MADE)~~**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Collins, counsel.
For the Respondent: Mr C Avery, Home Office Presenting Officer.

**DECISION AND REASONS**

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge Bird) dismissing her appeal on asylum and human right grounds against the respondent's decision dated 10th of February 2015 refusing her leave to enter and seeking to remove her from the UK.

Background

2. The appellant is a citizen of Somalia born on [ ] 1989. The basis of her claim can briefly be summarised as follows. Her family lived in the Hamar Weyne district in Mogadishu. She had paternal aunts who lived in the same area. The appellant left Somalia in 1992 with her mother and siblings because of the civil war. Three other brothers remained with her father who was the Imam of the local mosque. A paternal aunt also stayed but the remainder of the family left and went to Yemen, where they were issued refugee cards and supported financially by the government.

3. Her father died in 2010 and her three brothers came to live in Yemen. None of her family went back to Somalia apart from her mother who went to collect documents following her father's death. Her family including her husband, who had refugee status, remained in Yemen as did her mother-in-law. The appellant described problems in Yemen and there came a time when her mother-in-law, who worked in the UN looking after children, decided that the appellant should leave. She and the appellant's siblings financed her trip to the UK where she had a sister as well as two brothers. She arrived in August 2012 and claimed asylum. She claimed that she could not return to Somalia because the war was still going on; she was in fear of the people and the government and in particular she feared that the war leaders would keep her as a slave.

4. The respondent accepted that the appellant was a Somali national from the Reer Aw Hassan clan and her account of what had happened to cause her family to leave Somalia in 1992. However, taking into account the country guidance in MOJ & others (Return to Mogadishu) Somalia CG [2014] UKUT 442, it was the respondent's view that the appellant could return to Mogadishu and it would not be unduly harsh to expect her to do so.

The Findings of the First-tier Tribunal Judge

5. The appellant's appeal against this decision was heard by the First-tier Tribunal on 10 July 2015. The appellant was not represented. She and one of her brothers gave oral evidence recorded by the judge at [13]-[21]. There was no issue with the appellant's claim to be a member of a minority clan or that she had left Somalia with her mother and siblings in 1992. The judge identified the question for her as whether there would be any risk of the appellant being persecuted for a convention reason on return or subjected to treatment contrary to article 3 of the ECHR.

6. The judge identified a number of inconsistencies in the evidence about whether her father had remained in Somalia or travelled to Yemen towards the end of his life, whether all the siblings had gone with their mother to Yemen and whether her father had sisters in Somalia. At [34] the judge said:

> "I find that the evidence as to when her father came to live in Yemen and also who he had been living with in Somalia has been in conflict which could not be explained. I have formed the view that perhaps the relationship between the witnesses was not as claimed - one of siblings. The appellant had her own family living in Yemen as she has claimed. She also has aunts living in Somalia. There is nothing to show that if this appellant is returned to Somalia now that she will be at any risk."

7. The judge found that the appellant did have some family still remaining in Somalia and that she and the witness had not been truthful in saying that everyone had now left [37]. She said that the appellant was a member of a minority clan and would be able to seek assistance from her clan members who may not be close relatives. Referring to the country guidance in MOJ, the judge said that it was accepted that a person facing a return to Mogadishu after a period of absence who had no nuclear family or close relative in the city to assisted in re-establishing himself on return would need to show that circumstances exist which would make his return there unduly harsh and cause him to be living in circumstances, falling below that which was acceptable in humanitarian protection terms [38].

8. The judge went on to find the appellant would have prospects of securing a livelihood in Somalia, the evidence showing that this was now possible. She would also be able to receive remittances from family abroad as happened when she was living in Yemen. The evidence pointed to returnees being able to take jobs offered, even at the expense of those who had never been away. The appellant was therefore someone who had failed to show, if returned to Somalia with the change of circumstances there particularly in the light of the country guidance decision in MOJ, that she would be likely to face persecution for her clan membership [39]. The judge further noted that the appellant had a husband who remained in Yemen and with the changed circumstances, there was nothing to stop him now returning to Somalia and re-uniting with the appellant [41]. For these reasons the appeal was dismissed.

The Grounds of Appeal and Submissions

9. The grounds argue that the appellant was not represented and received limited assistance from the respondent's representative particularly in relation to the respondent's own guidance post-dating the country guidance decision in MOJ. It is further argued that there was a need for a nuanced and cautious approach to that decision as none of the appellants were women. The grounds refer to the Country Information and Guidance issued February 2015 and March 2015 and argue that it is difficult to see how a sustainable decision in relation to a female Somali appellant could be made without a proper and detailed analysis of those reports. It is further argued that the judge's finding that the appellant would be safe in Mogadishu because she had aunts there was unreasoned and unsustainable as was the finding that she would have prospects of securing a livelihood there. Finally, it is argued that the judge took into

account an irrelevant consideration: when the risk had to be assessed the fact was that the appellant's husband was in Yemen and not Somalia.

10. Permission to appeal was granted by the Upper Tribunal on the basis that the grounds raised an arguable error of law in respect of the judge's finding that the appellant would not be at risk of persecution as a result of her clan membership or gender or a breach of article 3 if removed to Somalia.

11. In his submissions, Mr Collins argued that it was reasonable to expect that in an asylum appeal an unrepresented appellant would receive help from the respondent. The two CIG reports on minority clans and gender violence had not been produced at the hearing. Mr Collins highlighted a number of passages in those reports to support his argument that had they been produced, they could have affected the outcome of the appeal. These were two comprehensive reports specifically dealing with women and without them the judge could not make a properly sustainable decision. It had been accepted the appellant was a member of a minority clan but that issue, so he submitted, had not been adequately dealt with. The judge had failed to give adequate reasons for her decision and there had been no proper assessment of the appellant's profile. He submitted that when the decision was read as a whole, the reader could not be confident that an unrepresented woman had obtained a sufficiently safe analysis of the risk on return.

12. Mr Avery submitted that MOJ was good law and the CIGs referred to did not undermine it. The key issue had been whether the appellant had family support in Mogadishu. The judge had not been satisfied with some aspects of the evidence and had explained why. He argued that she had been entitled to conclude that there were family members who could support the appellant: this was a finding of fact properly open to her. In the light of the judge's findings, any issue of a risk arising from the appellant's clan membership was covered by MOJ.

13. In reply Mr Collins submitted that the judge should have carried out a more nuanced assessment of the evidence. The CIGs post-dated and added to MOJ. The overall gist was that women throughout Somalia faced endemic gender-based violence. The judge had failed, so he argued, to make adequately clear findings and her decision should be set aside

Assessment of Whether there is an Error of Law

14. The issue for me at this stage of hearing is whether the judge erred in law such that the decision should be set aside. The country guidance in MOJ includes the following in the italicised summary:

> (vii) 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.

(viii) the significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support 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 for minority clan members."

In the light of this country guidance it is clear why the judge focused on whether the appellant had close family members in Mogadishu and whether she would be able to secure a livelihood.

15. It is argued that as the appellant was not represented, she should have received more assistance from the respondent's representative and in particular that the CIGs of February and March 2015 should have been produced at the hearing. It has not been argued that these documents show that there were "Robinson obvious" issues which should have been identified by the respondent or the judge. It is argued in substance that, had the judge been made aware of these reports, it would have provided evidence capable of affecting the outcome of the appeal. However, it was for the judge to decide the appeal on the basis of the evidence before her. There was a full and comprehensive decision letter and she heard oral evidence from the appellant and a witness. I am not satisfied that the failure by the respondent's representative or the Tribunal to seek out and provide this evidence amounted to an error of law. There was no obligation to do so, absent it being shown that there was a "Robinson obvious" point needing further investigation.

16. It is only rarely that evidence produced after a hearing can be used as the basis for making a finding that there has been an error of law. This is not a case where it has been argued that the Tribunal proceeded on any mistaken view of the facts so as to bring into play the principles set out by the Court of Appeal in E & R [2004] EWCA Civ 49. Mr Collins accepted that the CIGs did not contradict the country guidance decision but post-dated and added to it. His argument was that it provided clear evidence that throughout Somalia women faced endemic gender-based violence but there is no reason to believe that the judge would not have been aware of the general background relating to women in Somalia but it was for her to assess the risk to this appellant in the context of her particular circumstances.

17. I am not satisfied that the judge erred in her approach to the evidence. She identified the core issues and reached a decision properly open to her. The key issue was whether the appellant would be at real risk in the light of the guidance set out in MOJ. The judge found that she came within the head note at (vii). The arguments put forward in relation to this issue are essentially an attempt to re-open findings of fact, which were properly open to the judge. It is argued that the findings of the judge at [37] that the appellant had a family in the Mogadishu and at [39] that the appellant

had prospects of securing a livelihood were not adequately reasoned. However, these were findings of fact properly open to the judge, who rightly focussed on the appellant's particular circumstances. The reasoning is clear when the determination is read as a whole. The judge is further criticised for referring to the fact that she had a husband remaining in Yemen. It is contended that this was an irrelevant consideration but it is a point, which it was open to the judge to make and, in any event, it followed on from her finding in the preceding paragraph that the appellant would not be at real risk in Mogadishu.

18. Permission to appeal was granted specifically in relation to whether there was an error in the judge's finding that the appellant would not be at risk as a result of her clan membership or gender. However, I am satisfied that on the basis of the evidence before the judge and the current country guidance that she did not err in law on these issues. It is of course open to the appellant to make further representations if there is now further evidence not before the judge, which might cast a different light on her claim for asylum.

Decision

19. The First-tier Tribunal did not err in law and its decision stands. No anonymity order was made by the First-tier Tribunal and no application has been made to the Upper Tribunal.

Signed H J E Latter

H J E Latter Date: 29 February 2016
Deputy Upper Tribunal Judge