



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03437/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

On 18 April 2018

**Decision & Reasons
Promulgated
On 03rd May 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

A A S

(ANONYMITY DIRECTION MADE)

Appellant

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Ms M Cleghorn instructed by Halliday Reeves

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Caskie promulgated on 5 July 2017, allowing the appellant's appeal against a decision of the respondent made on 22 March 2017 to refuse a claim for asylum and humanitarian protection.
2. The appellant's case is that she is a citizen of Somalia who was born in Mogadishu, living there until 2008 and she, and her family moved to a refugee camp in Kenya. She later returned and began to work in a tea shop acquainted by police officers, as a result of which she was threatened by Al Shabab, having begun to receive threats by telephone in early 2015. She did not leave her job, but later two of her colleagues were killed in

August 2016 and she then received a further threatening phone call, prompting her to leave Somalia. Prior to her departure from Somalia she had hid in her father's home and arranged for an agent to facilitate her departure.

3. For the reasons set out in the refusal letter of 22 March 2017 the respondent did not accept the appellant's claim. It was accepted that she was Somali but it was not accepted that she had worked in a tea shop frequented by members of the local police force given the vague description of police officers who she said frequented her work place, contradictory answers regarding her location of the police station, so, it was, however, accepted that she had worked in a tea shop. The Secretary of State did not accept the appellant had been threatened as claimed but she was unable to give clear or credible reasons as to how they else Al Shabab would have acquired her professional phone number, contradictory answers to the number of threats given, the vagueness as to the nature of the threats and as objective evidence did not show that they would target people of such a low profile. It was not accepted that the appellant's colleagues had been killed. On that basis she was not satisfied that the appellant was at risk on return to Somalia.
4. On appeal the First-tier Tribunal Judge Caskie found:-
 - (i) The appellant's evidence was presented in a clear and consistent manner [20,] it not being surprising that she did not immediately flee, the decision to do so flowing from threats which had accumulated [20] and that he did not attach significant weight to the single inconsistency of the appellant's account;
 - (ii) the overall account of the appellant had given was plausible in light of the background information regarding the targeting of tea shops, the appellant's account being not simply that she was targeted by Al Shabab because she was providing services to the authorities but because she was doing so in close proximity to a police station, that the appellant had been involved in avoiding the need on the part of the police to arrange further from their base in order to obtain services [21], and the opportunity for Al Shabab to attack the authorities away from their more secure base therefore being reduced;
 - (iii) the appellant appeared to be uneducated with limited experience of the world;
 - (iv) that the appellant's account met the low standard of proof in relation to asylum claims [23];
 - (v) that he was satisfied that Al Shabab would still be interested in her on return to Somalia as a person who had provided services to the authorities, and activities that they would wish to deter [24];
 - (vi) that it would not be reasonable for the appellant's husband to be required to give up his education in order to avoid the appellant being

entitled to refugee protection; and there was thus no basis on which the appellant would be able to relocate internally with her husband in Somalia [25];

5. Having regard to **Osman v United Kingdom**, and the volatility of the situation in Somalia that there is no real prospect that she could obtain the protection from the authorities.
6. The respondent sought permission to appeal on the grounds that the judge had erred:
 - (i) in failing to give consideration to the submission that, having actioned which is how the Al Shabab had left the tea shop, the appellant could no longer be at risk;
 - (ii) in not noting that had the ultimate goal for Al Shabab had been to kill the appellant they would have done so rather than make threats to do so. She did not comply; and, as she has now done so, she would no longer be at risk;
 - (iii) in failing to take into account that fleeing the country and leaving her husband rather than just leave her job is such an extreme reaction as to be fatal to the appellant's credibility;
 - (iv) that the judge had erred in his assessment of what would be unduly harsh in finding that it would be reasonable to expect the appellant's husband to relocate with her.
7. On 29 November 2017, Upper Tribunal Judge Allen granted permission.
8. The first two points identified are in essence that the judge fails to appreciate that, as the appellant had now complied with what Al Shabab had asked her to do, she would no longer be at risk. That was a point raised by the respondent in submissions [11]. I note Ms Cleghorn's submission recorded at [13] that the appellant's evidence that once a threat had been made by Al Shabab they would carry it out which was her recent experience. It is clear from the judge's decision that having recorded the submissions, he took them into account - see for example the references to Mr Appleby at [20]. The judge found [24] that "I have no doubt that Al Shabab would still be interested in her as a person who has provided services to the authorities. I am in no doubt that Al Shabab would view that as an activity they would wish to deter". That is, I consider, a sufficient consideration of the respondent's submissions. Further, the assertion that had the men who wished to kill her that they would have done so, is predicated in the assumption as to how Al Shabab would behave in the particular circumstances and is predicated on the knowledge of their actual motives, assuming them to be rational in making her cease her activity and that they would not wish to do anything more. That too fails to identify error in the decision of the judge.

9. The third point is simply an attempt to reargue the case. There is no indication that this submission was made to the judge, nor does it merit weight.
10. I do, however, consider that the judge did err in his assessment of the reasonableness of internal flight.
11. The fact that the appellant's husband might not be able to continue his education is in my view a wholly inadequate basis for considering that relocation would be unduly harsh. On that basis, the decision involved the making of an error of law, and is set aside to be remade on that issue. I heard further submissions on that point, both representatives identifying to me the relevant passages set out in the respondent's Country Guidance.
12. I am satisfied that on the basis of the preserved findings of Judge Caskie, generous as they are, that the appellant is at risk from Al Shabaab in her home area, that is, Mogadishu. While there is no finding on what the husband would do, there is no indication that he would not be in a position to assist the appellant, and have therefore approached the issue of internal relocation on the basis that she would not be a lone female.
13. In assessing whether the applicant could relocate to another area, I have had regard to the Home Office's Country Guidance notes on the Security Situation in Southern Somalia, and on Al-Shabaab. In addition, it is relevant to consider also AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 45.
14. While I accept that the appellant does not have a high profile, she is at risk in her home area. The question is whether it would be unduly harsh to expect her to relocate.
15. At section 2.4.4. and 2.4.5 of the Security Situation note, it is stated:
 - 2.4.4 In AMM and others, the Upper Tribunal held that internal relocation to an area controlled by Al Shabaab is not feasible for a person who has had no history of living under Al Shabaab in that area and is in general unlikely to be a reasonable proposition for someone who has had such a history (paras 598-601) (see also security situation, freedom of movement and the country policy and information note on Somalia (South and Central): Fear of Al Shabaab).
 - 2.4.5 For areas of south and central Somalia which are not under the control of Al Shabaab, in AMM and others the Upper Tribunal held that internal relocation is in general unlikely to be an option, if the place of proposed relocation is stricken by famine or near famine. In addition, family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation. Travel by land across southern and central Somalia to a home area or proposed place of relocation may well, in general, pose real risks of serious harm, not only from Al Shabaab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence (paras 603-605) (see also Freedom of movement and the country policy and information note on Somalia: Women Fearing Gender-based Violence).

16. The evidence on the humanitarian situation set out in the Home Office Guidance produced shows, as Ms Cleghorn submitted, that famine or near famine situations as well as drought over large parts of South and Central Somalia. Further, I am not satisfied that the appellant or her husband have clan or family connections outside Mogadishu, and I note also that many are now driven to urban areas, and it is not at all clear that even were there to be a place other than Mogadishu where the appellant could live that she or her husband could safely get there, given the checkpoints. Indeed, the map produced to me in the hearing shows problems on all the roads out of the Mogadishu area.
17. Taking all of these factors into account, and bearing in mind that the appellant and her husband would effectively be displaced people, I am satisfied that it would be unduly harsh even as a couple to relocate, and that accordingly she has a well-founded fear of persecution. Accordingly, I allow her appeal on that basis. I am also satisfied that, for the same reasons, the risk of serious harm to her on return would be such that her removal would be in breach of the United Kingdom's obligations under article 3 of the Human Rights Convention and thus I allowed her appeal on human rights grounds also.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by allowing it on refugee and human rights grounds.

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

Date 30 April 2018



Upper Tribunal Judge Rintoul

