



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

Appeal Number: PA/06347/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 13 February 2018**

**Decision &  
Promulgated**

**On 22 February 2018**

**Reasons**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**ZA  
[Anonymity direction made]**

**and**

**Secretary of State for the Home Department**

Appellant

Respondent

**Representation:**

For the appellant: Mr T Gaisford, instructed by JD Spicer Zeb Solicitors

For the respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Ripley promulgated 20.10.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 13.6.17, to reject his protection claim.
2. First-tier Tribunal Judge Safer granted permission to appeal on 29.11.17.
3. Thus the matter came before me on 13.2.18 as an appeal in the Upper Tribunal.

*Error of Law*

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision should be set aside.
5. The basis of the protection claim was a fear of mistreatment due to membership of a particular social group (PSG), namely a lone Somali female of the Sheikhal minority clan, and fear of her former neighbour, alleged to be a member of Al Shabaab.
6. Judge Ripley accepted that the appellant had demonstrated that she was a minority clan member, and accepted the medical diagnosis, including that she was suffering from a severe depressive disorder and PTSD; even though she had declined and was not currently receiving any medical treatment.
7. However, the judge rejected the appellant's factual account of abduction and subsequent escape, and went on to find, applying MOJ and others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), that she was not at risk on return. The judge also rejected the claim that her family and her uncle's family no longer lived in Somalia.
8. The grounds of application for permission to appeal complain that despite accepting the medical evidence and finding that the appellant had given a consistent basic account, the claim of abduction was rejected because her account of returning to her mother's house before leaving Somalia was totally inconsistent with her claim that it had been too dangerous to even notify her mother than she had escaped. It is submitted that the judge substituted her own perception of what is reasonable when that view was unsupported by evidence and was dangerously speculative, amounting to an error of law. In relation to the appellant's family in Somalia, the judge also erred by requiring independent evidence of the family's departure and making mistakes as to dates.
9. In granting permission on all grounds, Judge Safer found it arguable that "the judge may have erred in making an adverse credibility finding that a 16-year-old girl with PTSD and a severe depressive disorder who required counselling, and was from a minority clan, would not have returned to her mother's prior to fleeing the country."
10. In oral submissions, Mr Gaisford relied on KH v Secretary of State for the Home Department [2006] EWCA Civ 1037, and the principles set out at [28] to [30], to the effect that inherent probability can be a dangerous and even wholly inappropriate factor to rely on in some asylum cases. It was not proper to reject an applicant's account merely on the basis that it is not credible or not plausible. That some or even most of an appellant's story may seem inherently unlikely does not mean that it is untrue. The ingredients of the story and the story as a whole have to be considered against the available country evidence and reliable expert evidence, and

other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence, where there is any.

11. Mr Gaisford pointed to the findings of the First-tier Tribunal that the appellant had given a consistent account, that the judge accepted the medical diagnosis, and that the claim to be from a minority clan had been accepted. He then took me to the expert report at [28] through [34] where the expert was asked to comment on the consistency and plausibility of the appellant's account in the light of the expert's knowledge and expertise of the circumstances in Somalia.
12. For the Secretary of State, Mr Nath pointed to the decision of the First-tier Tribunal as being detailed and addressing all the evidence, and submitted that it was open to the judge to consider and make findings as to whether the account was accepted. The judge was entitled to reach a finding on credibility. In reply, Mr Gaisford maintained that the crucial finding was one of plausibility not credibility.
13. I reserved my decision, so that I could read again and more carefully the contested parts of the First-tier Tribunal decision. For the reasons set out below, I am satisfied that the findings and conclusions were fully open to the judge and in particular that the judge was entitled to reject the factual account of abduction, for the cogent reasons set out in the decision.
14. It is clear that the judge had regard to the appellant's mental health and treated her as a vulnerable witness. It is noted at [15] that she was uncomfortable to talk about her experience of abduction and thus questioning was limited in this regard.
15. The judge set out a detailed summary of the evidence and the submissions, including the medical evidence. At [44] the judge made clear that in considering the appellant's account she took into account the effect of her poor mental health and age on her ability to give a consistent account in interview and at the hearing. The judge did not compartmentalise the decision. She confirmed that before reaching any of her conclusions, she considered all the evidence in the round. The way that evidence was set out and considered bears testimony to that approach. It is clear that the judge gave a careful consideration to each aspect of the evidence, making some findings in the appellant's favour, such as the minority clan membership, and accepting that she had given a consistent account.
16. In relation to the claim of abduction, it was the appellant's case that she had been propositioned and threatened by a neighbour who was an Al Shabaab militant. A few days later, she was abducted and held for five months, during which time she was beaten and raped, before being assisted to escape by neighbours, taking shelter in her uncle's home. After three months, she returned home and lived with her mother for a further two months before leaving Somalia.

17. The judge considered and agreed with the submission of the Secretary of State in the RFR that the appellant would have remained in hiding at her uncle's for three months after her escape without ever notifying her mother, even though she knew her mother was looking for her. The reason given for this was in case the neighbour learnt where she was hiding. The judge then considered the point made in the RFR that the appellant's return home, the only reason for which "because it was difficult living in someone else's home," was inconsistent with a claimed fear of a neighbour who had kidnapped her and raped and mistreated her over a period of 5 months.
18. At [52] the judge took into account the appellant's further explanation for this behaviour, not telling her mother where she was and then returning home for two months. She said that she was worried that if her mother knew where she was, she would come to see her and might be followed, or would beg her to return home. In interview, she said she returned home because her mother was always worrying about her.
19. I am satisfied that the judge was entitled to consider and assess the credibility of the abduction account and the explanations for not telling her mother where she was and for returning home despite the claimed fear of the neighbour. As the judge stated at [52] it is difficult to understand why she would not have sought to let her mother know that she was safe after escaping, whilst minimising risk to herself. There were ways, such as having another person tell her mother, or telephoning her, without disclosing where she was and explaining why she did not feel it safe to come home. At [53] the judge noted another explanation for returning home, that she had only returned to say goodbye, but then stayed for two months because the agent took longer than expected. The judge concluded that if it was not safe to be at her mother's home, which was the reason for neither returning home after escape nor letting her mother know where she was, then the appellant did not need to remain at her mother's home; she had not stated that she was unable to remain longer or return to her uncle's home.
20. At [55] the judge reiterated that she had considered and taken into account the appellant's young age, and the effect of the poor mental health, and noted that her basic account had remained the same throughout. The judge then addressed again the medical evidence and the country expert evidence. The latter confirmed that young women are abducted, raped and abused. It was specifically noted that the expert found plausible the appellant's account of staying with her uncle and not telling her mother, and then staying at home with her mother before leaving Somalia.
21. For my own part, I find that on this issue the expert was effectively straying beyond the boundaries of expert opinion in that set out at [33] of the report, losing his objectivity and thus the reliability of his opinion. As the judge noted at [58], the expert did not explain why he accepted that part of the account following the escape; he simply stated that he found it

plausible. It is not for the expert to profess merely that he believes the account; that is not his responsibility. Frankly, I fail to see how the issue as to why the appellant did not let her mother know where she was and the inconsistency of then returning home can have anything to do with expert evidence of country background knowledge and/or experience. It is a matter for the judge to assess in the light of the evidence as a whole.

22. I also note that the judge went on to consider at [59] and [60] other aspects of the account that troubled her. Finally, at [61] the judge reiterated that she took into account that the appellant suffers from the medical conditions identified by the psychiatrist, but concluded that having considered the evidence overall, the account of the abduction was not accepted.
23. I am satisfied that the conclusion reached on this issue was entirely open to the judge on the careful assessment of evidence. This finding and conclusion does not amount to the judge merely applying her subjective opinion as to what a young woman from Somalia might or might not do. It was a credibility finding and not a plausibility finding, one for which cogent reasons were provided, including the total inconsistency between the reasoning proffered by the appellant for not telling her mother where she was and then for returning home after all.
24. Similarly, I am satisfied that the judge has provided cogent reasoning for rejecting the appellant's claim that she has no family in Somalia to return to. It is clear that the judge assessed the evidence in the round, making due allowance for the appellant's age and mental health. Nothing turns on the alleged error in dates. No material error of law is disclosed in this ground.

### *Conclusion & Decision*

25. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

*Anonymity*

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I consider it appropriate to make anonymity direction.

**Direction Regarding Anonymity** - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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. Breach of this order may lead to proceedings for contempt of court.

*Fee Award*

*Note: this is not part of the determination.*

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Date:**