



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

Appeal Number: PA/08502/2017

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice, Belfast**

**On 4 April 2019**

**Decision & Reasons  
Promulgated  
On 25 April 2019**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**SM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:** For the Appellant: Ms L Smyth, instructed by Gillen and Co Solicitors

For the Respondent: Mr M Mathews, Senior Presenting Officer

**DECISION AND REASONS**

**Anonymity Direction**

I make an order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure of any matter or material that might lead members of the public to identify the appellant. A failure to comply with the terms of this order may result in contempt proceedings.

1. The appellant is a minor born in 2006, and a national of Somalia. She has been granted permission to appeal the decision of First-tier Tribunal Judge Fox who dismissed her appeal on protection grounds (the Refugee Convention and humanitarian protection) and under Articles 2 and 3 of the Human Rights Convention for reasons given in his decision dated 30 October 2018.
2. The basis of the appellant's claim to protection is that she cannot return to Somalia because of her membership of a particular social group and fears that she would be forced to undertake FGM. In addition, it is contended on behalf of the appellant that she would be at risk because she is light-skinned.
3. The appellant's parents (and her brother) are also in the United Kingdom. She arrived on 21 August 2014 with her mother and brother. Her father arrived on 11 September 2014. Her parents sought recognition as refugees with the appellant and her brother as dependants. Their claims were refused on 6 February 2015. The appellant's parents appealed unsuccessfully against that decision to the First-tier Tribunal which was heard by Judge Gillespie. They were similarly unsuccessful in their applications for permission to appeal to the Upper Tribunal and by January 2016, there was no further avenue of appeal available to them. The appellant made her application for asylum on 14 February 2017.
4. In dismissing the appeal, Judge Fox made extensive reference to the decision of Judge Gillespie who had made adverse credibility findings regarding the appellant's parents. Judge Fox came to a number of factual conclusions which are best captured by the following paragraphs from his decision:

"33. On the evidence before me today I am also satisfied that the Appellant's individual circumstances and background information have shown to me that it would not be unreasonable to expect her to return to Somalia and live in the city of Mogadishu, with her family, to include both her parents. She has family in Mogadishu. I am satisfied that it has been demonstrated that FGM is legal in Somali constitution. Steps have been taken by the authorities to have this band [banned] in the country. Her family are set against FGM and would provide further protection and support coupled with the authorities disposition in regard to stamping out such a vile practice.

34. Regard to any possibility that the Appellant may be forced into an early marriage again, I cannot accept this.

35. The Appellant is fully and formally supported by her parents in regard to these issues. They have clearly stated their preference not to allow this to happen to their daughter. Their support compounded by the availability of government agencies to provide additional support, as confirmed by the background evidence, confirms that the family's wishes can be adhered to and that she would not be forcibly married off at an age that was considered to be too young.

36. The Appellant's witnesses are not good witnesses as to fact and truth. Their evidence may not be relied upon. The Appellant may be safely returned to her home country, Somalia without fear of misfortune, adverse attention or otherwise.
  37. On the evidence before me today I am satisfied that the Appellant has not provided any credible basis for challenging the assertions, analyses and conclusions in the Respondent's refusal letter. On the evidence before me today, I am satisfied those assertions, analyses and conclusions are valid and tenable and I reach similar conclusions myself [for] like reasons. I find that the Appellant's failure to claim asylum on the basis of a fear of FGM and forced early marriage when she could have first claimed with her parents' claim without a satisfactory explanation, undermines the credibility of the Appellant's claim to have come to the United Kingdom to escape persecution. That credibility is further undermined by the inconsistencies and implausibilities in the story, examples of which I have referred to above. I find therefore that the core of the Appellant's account of persecution lacks credibility and is a fabrication designed to gain access to the United Kingdom.
  38. On the evidence before me today [I] am satisfied that the Appellant is an indirect economic migrant brought to the UK [by her] parents without either knowledge or consent on her part, and has not come to the United Kingdom to seek international protection."
5. The grounds of challenge on which permission was granted were in summary as follows:
- (i) The judge erred by failing to apply the guidance in *AMM and Others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 00445 (IAC).
  - (ii) The judge failed to consider material objective evidence thus rendering his decision irrational. This is with specific reference to some 23 reports and authorities provided with a 16-page schedule of essential paragraphs including UK Home Office Country Guidance and Policy. None of that was referred to in the decision.
  - (iii) The judge had erred by making adverse credibility findings based on the appellant having failed to make an asylum claim at the earliest occasion without good reason. It is contended this was irrational.
  - (iv) The judge had placed excessive weight on previous findings made in relation to the appellant's parents' cases where the issue of FGM had not been litigated. It is also contended this was irrational.
2. At the outset of the hearing Mr Matthews explained that it had been agreed with Ms Symth that the First-tier Tribunal had erred in law based on the grounds of challenge. Both also agreed that there were substantial findings that needed to be made in the re-making of the decision for which the appropriate forum would be the First-tier Tribunal. In addition to her agreement on these matters Ms Smyth clarified that the appellant's father

had not been interviewed by the Secretary of State in respect of the appellant's claim but had given evidence before the First-tier Tribunal.

3. In my judgment the parties were correct in taking this approach. It is evident from my reading of the judge's decision that although he referred to *AMM & Others*, he did not have regard to that case as guidance in relation to the risk of FGM and failed to undertake the risk assessment that was required. That guidance needs to be considered in the context of the appellant's father's evidence regarding the force of the custom of this practice. Accordingly, I do not consider that any of the findings by First-tier Tribunal Judge Fox (as opposed to those by First-tier Tribunal Judge Gillespie) can be preserved. The decision of First-tier Tribunal Judge Fox is therefore set aside and the case remitted to the First-tier Tribunal for a hearing de novo before a differently constituted tribunal.

Signed

Date 18 April 2019

UTJ Dawson  
Upper Tribunal Judge Dawson