



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

Appeal Number: PA/04187/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 6th March 2020**

**Decision & Reasons Promulgated
On 28th April 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**IAM
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar of Counsel, instructed by Terence Ray Solicitors
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Moffatt promulgated on 10 December 2019, in which the Appellant's appeal against the decision to refuse her protection and human rights claim dated 3 April 2019 was dismissed.
2. The Appellant is a national of Somalia, born on 1 July 1996, who claims to have arrived in the United Kingdom and claimed asylum on 16 April 2017. Her claim was refused on 25 September 2017 and her appeal against that refusal dismissed in a decision promulgated on 23 October 2017; following which she became appeal rights exhausted on 6 April 2018. The Applicant

made further submissions that she would be at risk on return to Somalia as a lone woman, as a member of a minority clan and because of the general security situation in Somalia. She also relied on family life established in the United Kingdom with her father.

3. The Respondent refused the application, first by referring to the significant adverse credibility findings made by the First-tier Tribunal in 2017 and the finding that the Appellant had family in Mogadishu at that time whom she was in contact with. The Respondent considered that there was no further evidence beyond the Appellant's own written statement that she would be at risk on return from Al-Shabaab and she would not be at risk as a member of a minority clan. The Respondent referred to the CPIN about women dated April 2018 which found that a lone woman without family connections or resources is likely to be at risk on return but there was nothing to disturb the previous findings that the Appellant was in contact with family in Mogadishu. The fact that the Appellant's father was in the United Kingdom did not affect that. Overall, there was no risk on return, no need for humanitarian protection and no breach of Articles 2 and/or 3 of the European Convention on Human Rights. In relation to Article 8 of the European Convention on Human Rights, the Respondent did not accept that the Appellant had established family life in the United Kingdom for these purposes, nor did she meet the requirements of paragraph 276ADE of the Immigration Rules. There were no exceptional circumstances to warrant a grant of leave to remain.
4. Judge Moffatt dismissed the appeal in a decision promulgated on 10 December 2019 on all grounds. The First-tier Tribunal took the previous appeal decision from 2017 as the starting point in accordance with the principles in *Devaseelan* and noted that the Appellant had not previously claimed to be at risk on the basis of her clan membership. The First-tier Tribunal referred to the previous adverse credibility findings and found no reason to depart from the findings therein. The Appellant would return to Somalia with family and clan support and would not be at risk on return. Finally, there was no established family life between the Appellant and her father for the purposes of Article 8 and no disproportionate interference with her right to respect for private life, in particular taking into account the factors in section 117B of the Nationality, Immigration and Asylum Act 2002.

The appeal

5. The Appellant appeals on three grounds as follows. First, that the First-tier Tribunal's approach to the evidence was erroneous, in particular that the evidence of the Appellant's father's grant of refugee status was not before the Tribunal in 2017 and supports the Appellant's claim to have suffered the same persecution in Somalia. Further, that it was unfair for the First-tier Tribunal to find that the Appellant's father had not tried to locate family through members of the community in circumstances where the Red Cross had been contacted and there was no basis for the finding that the Appellant still had family in Somalia. Secondly, the First-tier Tribunal erred in its findings on Article 8, applying the wrong standard of proof for

the finding that the Appellant had family in Somalia and that family life had not been established between the Appellant and her father given her care for him. Finally, that the First-tier Tribunal had failed to consider up to date country information which supported the Appellant's claim to be at risk on return on the basis of her clan membership and as a lone woman.

6. At the oral hearing, Mr Jafar relied on the written grounds of appeal and made further extensive oral submissions which went significantly beyond the matters set out in writing. In relation to the persecution claim, Counsel submitted that the First-tier Tribunal had failed to make any findings about the credibility of the Appellant's father's evidence and the decision contained a factual error in that the Appellant had relied on being at risk from her clan membership in her written statement in 2017.
7. Counsel's submissions on the protection findings focussed significantly on the background objective evidence as to the situation in Somalia, however he confirmed that it was not and had not been the case that the Appellant was seeking any departure from the country guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC). In the alternative, Counsel relied on this evidence to show that it was not inherently improbable that the Appellant's family in Somalia had fled given the worsening security situation there and provides sufficient reasons as to why they may have done so. Counsel was invited on a number of occasions to clarify the Appellant's case before the First-tier Tribunal and to confirm whether the objective evidence was specifically relied upon for this reason, to support the claim that the Appellant has no family remaining in Somalia, rather than in support of her claim to be at risk on return as a minority clan member and her claim for humanitarian protection based on the general security situation. At best, Counsel's instructions were that that this was the basis upon which background country evidence was submitted and relied upon but there was nothing to suggest or support this. In particular, there was no skeleton argument and there is no record of any such submission in the First-tier Tribunal's decision.
8. In relation to Article 8, Counsel submitted that the First-tier Tribunal failed to apply the correct test as to whether family life existed between the Appellant and her father, that there only needed to be something more than normal emotional ties, not more than normal dependency. Counsel submitted that this family life had to be viewed in the context of separation in 1999 caused by conflict and re-establishing a relationship in the United Kingdom since 2017, which alone constituted exceptional circumstances sufficient to engage Article 8. In this case, there was in addition sufficient evidence of real, committed and effective support between family members to establish family life. The same factors as to forced separation were relied upon to show that the error would be material as interference with family life would be disproportionate for this reason.
9. On behalf of the Respondent, Ms Fijiwala submitted that there was no evidence before the Upper Tribunal or from the notes she had available

from the Home Office Presenting Officer who appeared before the First-tier Tribunal to suggest that the Appellant had relied on the background country evidence in the way suggested by Mr Jafar, to the contrary, this was relied upon in the context of Articles 2 and 3 of the European Convention on Human Rights only.

10. As to the findings made by the First-tier Tribunal on the case and evidence before it, it was submitted that the First-tier Tribunal had started from the correct point of the previous Tribunal's significant adverse credibility findings and also made findings as to inconsistencies between the Appellant's evidence and that of her father, as well as the lack of detail in their evidence.
11. Ms Fijiwala accepted that the Appellant had previously referred to her membership of a minority clan, the Tribunal's decision in 2017 recorded that she had not made any claim of past persecution or harassment on this basis; such that there was no factual inaccuracy about the First-tier Tribunal's reference to this.
12. Overall, it was submitted that the further evidence before the First-tier Tribunal was very limited and did not provide any basis for a departure from the previous Tribunal findings in 2017. The decision on the protection aspects of the Appellant's claim were open to the First-tier Tribunal and were in accordance with the country guidance.
13. In relation to Article 8, it was submitted that there was no material error by the First-tier Tribunal on whether family life was established for these purposes nor the overall conclusion that there was no disproportionate interference taking into account the factors in section 117B of the Nationality, Immigration and Asylum Act 2002. The evidence before the First-tier Tribunal was very brief as to the claimed family life and at best, showed only normal emotional ties between the Appellant and her father. In any event, even if family life had been established, it would not have made any difference to the outcome of the appeal in all of the circumstances.

Findings and reasons

14. In relation to risk on return, the First-tier Tribunal's findings began with the correct starting point of the previous Tribunal findings in 2017, at which time the Appellant did not claim to have suffered any past persecution on the basis of her clan membership and overall was found to have fabricated her claim in its entirety. There was a specific finding that the Appellant's family remained in Mogadishu and there was nothing to support her contention that they were no longer there. At the time of that appeal hearing, the Appellant was living with her father in the United Kingdom but he did not provide any written or oral evidence in support of the initial appeal.
15. The First-tier Tribunal considered that the Appellant's father's evidence lacked detail and did not corroborate her claim. The Appellant was not found to be credible and there was no reason to depart from the previous

Tribunal findings in 2017, that the Appellant had family in Mogadishu and would be returning with family and clan support such that she would not be at risk on return.

16. To assess the lawfulness of those findings, it is necessary to consider in more detail the evidence that was before the First-tier Tribunal and how that evidence was relied upon by the Appellant in support of her various claims (which included a risk of persecution on the basis of clan membership, as a lone woman and for humanitarian protection on the basis of the general security situation). The evidence before the Tribunal in 2017 from the Appellant was that she last had contact with her mother in Somalia and had lost contact with all family there after she had left. There was no evidence from her father about this issue at the hearing in November 2017, nor about his own status (beyond a copy of his British passport) or nature of his own asylum claim.
17. In her written evidence, the Appellant stated that she has no family left in Somalia, having been informed by a member of the Somali community that they had fled to Ethiopia but neither she nor her father had been able to locate them in Ethiopia.
18. The Appellant's oral evidence is recorded in the First-tier Tribunal's decision in paragraphs 18 to 24. With regard to her family in Somalia, the Appellant stated that she did not know where they were, maybe Ethiopia or Kenya and that her father had tried to find them; she had not and she had not contacted the Red Cross. The family had fled Somalia in mid-2018.
19. As part of her further submissions to the Respondent, the Appellant included a written statement from her father dated 28 January 2019, which was materially identical to his written evidence before the First-tier Tribunal, that he fled Somalia in 1998 due to the escalated conflict and because of his minority clan membership, entering the United Kingdom in 1999 and being granted refugee status in 2004. He stated that after his arrival, he learned that his family was in Kenya and following a visit to them in 2010, he sponsored their entrance to the United Kingdom for family reunion. At that time, the Appellant was not with the family in Kenya and her father did not know where she was, the family having lost contact with her whilst they were still in Somalia. The Appellant's father contacted the Red Cross to find the Appellant but received no information. They resumed contact in the United Kingdom. The Appellant's father stated that the Appellant has no family left in Somalia.
20. The Appellant's father's oral evidence is recorded in the First-tier Tribunal's decision in paragraphs 25 to 27. He stated that he had heard that his family members (the Appellant's mother and siblings) had left Somalia and travelled to either Kenya or Ethiopia and had attempted to contact them through the Somali community. The Appellant's father stated that he did not know exactly when the family left, but thought it was the end of 2017 and had known that they were planning to leave. He did not know whether the Appellant's uncles remained in Somalia and had

no way of contacting them. The Appellant's father's contact with the Red Cross was in 2010 and they had not been in touch with any news.

21. As above, there is nothing to suggest that any of the background country evidence in the Appellant's bundle was relied upon in support of the claim that the Appellant no longer had any family in Somalia and in any event, this adds little weight to the claim, particularly in circumstances where no reason has been given as to why the family fled and where the evidence about them and efforts to contact them was so thin. I find it was entirely open to the First-tier Tribunal to find that the Appellant had not provided any credible evidence to reach a different conclusion to the Tribunal in 2017 as to her family in Somalia. Her own evidence on this point amounted to little more than a bare assertion and without personally making any efforts to contact her family. The Appellant's father's evidence was that he had attempted to find family members through others in the Somali community, without giving any detail as to who these people were, where these people were (for example, if they were in the United Kingdom, Somalia, Kenya or Ethiopia) or when they were contacted. The contact with the Red Cross was in 2010, unevicenced and provided no support for the claim now. The Appellant's evidence was inconsistent with that from her father as to when her family fled and neither offered any information at all as to the whereabouts of the Appellant's uncles who had previously supported her.
22. In these circumstances, there was no error of law on the first ground of appeal. There was, as the First-tier Tribunal found, no credible evidence before it to depart from the previous findings of the Tribunal in 2017 that the Appellant had family in Somalia. The evidence was lacking in detail and not credible. The findings in paragraphs 36 and 38 were entirely open to the First-tier Tribunal and did not involve any error of law either on the first ground of appeal as originally put in writing, nor in failing to consider the background evidence as support for the contention about family (as submitted orally) on which there is nothing to suggest it was relied upon for that purpose; nor that it in any event supported the claim that these specific family members had fled.
23. Consequently, there is also no error of law on the third ground of appeal as the Appellant would not be returning as a lone woman (and therefore not at risk on return as such) and there is nothing in the country guidance nor background country evidence relied upon (which was not in any event relied upon to depart from the country guidance) to support the claim that the Appellant would be at risk on return as a minority clan member either. The Appellant's father failed to provide any evidence in support of the basis upon which his asylum claim was ultimately allowed, but in any event, the position in relation to minority clans was materially different in 2004 to now. The fact that there was evidence from the Appellant's father that he had been granted status in 2004 did not support the Appellant's claim now, nor did it form the basis of any departure from the Tribunal's findings in 2017, particularly when such evidence existed and could have been submitted at the earlier appeal.

24. The second ground of appeal concerns the First-tier Tribunal's findings on Article 8, which were as follows:

"42. The appellant has been in the UK since April 2017 and has lived with her father and step-family since that date and has established a limited private life since that date. To remove the appellant would interfere with that private life. Questions 3 and 4 in the Razgar test must undoubtedly be answered in the Respondent's favour.

43. The issue is whether the respondent's decision is proportionate. I note that there is a strong public interest in the maintenance of effective immigration controls. When considering section 117B of the Immigration Act 2014, I note that the appellant does not speak English as evidenced by her use of an interpreter today. The appellant is being supported financially by her extended family and, as such, is not a financial burden on tax-payers. I note that section 117B(5) requires me to attach little weight to private life established whilst the appellant's immigration status is precarious. The respondent has not produced any evidence to suggest the appellant should be refused leave on the basis of her suitability.

44. I find that the appellant's care towards her father is nothing more than that which would be provided by a child towards their parent. The level of care is not substantial enough to suggest that there is a level of dependence on the appellant. The care provided could be carried out by anyone. Before the appellant arrived in the UK, these tasks were carried out by the appellant's step-mother. No additional evidence has been submitted by the appellant in respect of the appellant's private life."

25. Again, when considering those findings it is necessary to consider the evidence of claimed family life which was before the First-tier Tribunal. The Appellant's evidence as to her relationship with her father was that this was re-established following her arrival in the United Kingdom and that she lives with him and his family (who are all British citizens) here. The Appellant stated that she took part in family responsibilities such as helping her father who is disabled, assisting in house duties, with the children and their daily needs. Her father supports her. The Appellant's father's evidence went no further than saying that the Appellant lives with him and contained no detail at all as to the nature of their relationship beyond that.
26. The evidence before the First-tier Tribunal as to the relationship between the Appellant and her father was incredibly thin and lacked any of the detail that would be required to establish family life for the purposes of engaging Article 8(1) of the European Convention on Human Rights. The fact that they were separated by conflict between 1999 and 2017 does not provide any basis, alone, or together with the evidence of the relationship now, for finding that family life is engaged. It was open to the First-tier Tribunal to find that there was no dependence established between the Appellant and her father beyond that of what would normally be expected

between an adult child and parent, such that Article 8(1) was not engaged. The Appellant's relationship with her father, step-mother and step-siblings was referred to and taken into account as part of her private life, with no other details of any significant private life being relied upon.

27. In any event, even if the First-tier Tribunal found that family life was established for the purposes of Article 8(1), that would not have materially affected the outcome of the appeal on human rights grounds. The First-tier Tribunal referred to the factors in section 117B of the Nationality, Immigration and Asylum 2004 which were adverse (or at best neutral) to the Appellant which would in any event tip the balance such that removal would not be disproportionate even if the relationships were taken into account as family life rather than private life. I do not find any error of law on the second ground of appeal and in any event, even if there was, it would not be a material error of law requiring that part of the decision to be set aside.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

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
April 2020



Date: 12th

Upper Tribunal Judge Jackson

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email