Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/04232/2021
PA/51459/2021 (UI-2022-000133)

THE IMMIGRATION ACTS

Heard at : Field House
On : 16 May 2022

Decision & Reasons Promulgated
On : 7 July 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHADYA SALUM AMOUR

Respondent

Representation:
For the Appellant: Ms Z Young, Senior Home Office Presenting Officer
For the Respondent: Ms N Awan, instructed by SN Law Chambers

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Ms Amour's appeal against the respondent's decision to refuse her asylum and human rights claim.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Ms Amour as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Somalia, born on 20 December 2002. She arrived in the UK on 2 March 2018 together with her stepbrother and claimed asylum the following day. On 24 July 2018 a referral was made on her behalf to the National Referral Mechanism in order for the Single Competent Authority to make a decision as to whether she was a victim of modern slavery. A negative reasonable grounds decision was made on 21 September 2018. The appellant's asylum claim was refused on 28 January 2021.

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4. The basis of the appellant's asylum claim is as follows. She was a Somali national and a member of the Bajuni tribe, born in Kismayo. Her father was killed when she was young and her mother re-married. Her stepfather was kidnapped in 2015 by unknown militiamen and she believed that that was because he belonged to a minor ethnic group. She and her family lived in hiding after his kidnap and they went to live with a friend of her mother's before then leaving Somalia for Kenya. They lived in a refugee camp in Kenya for around three years and then came to the UK. Her mother contacted her aunt who was living in the UK and informed her that she (the appellant) and her stepbrother would be coming to the UK and her aunt then collected them on their arrival. She would be at risk of harm as a member of a minority ethnic group if she had to return to Somalia.

5. The respondent did not accept that the appellant was a Somali national and relied upon the report of a language analysis interview conducted on 25 September 2018 by Sprakab, which concluded that there was a high likelihood that her linguistic background was that of Tanzania. The respondent noted further that the appellant was unable to provide any real details about her time living in Somalia or about the country and did not accept that that was explained by her age and level of education. The respondent concluded that the appellant was from Tanzania and that she and her stepbrother could return to their mother in Tanzania.

6. The appellant appealed against that refusal decision. Her appeal was heard by First-tier Tribunal Khan on 21 December 2021. Judge Khan heard from the appellant, who appeared in person without a legal representative. The appellant's aunt was not in attendance. The judge considered the language analysis report conducted by Sprakab to be seriously deficient in terms of the overall expertise of the analyst and the reasoning contained in it. She noted that the report stated that the appellant used Kibajuni words but did not elaborate on the extent that she had used such words or phrases and considered that it was not clear from the report what was the extent of the analyst's knowledge of the Kibajuni language, given that he had only visited Somalia. The judge noted that the appellant had produced her birth certificate, but she had not disclosed it to the respondent, and considered it to be unclear why the appellant's birth was registered in Mogadishu when she said she was born in Kismayo. She found the document to be unreliable and placed limited weight on it. The judge did not hold the appellant's lack of knowledge about Somalia or about the Bajuni clan against her given that she left when she was 12 and that the country was going through civil war at the time. The judge noted that the appellant's command of the English language was excellent. She rejected the appellant's claim that her knowledge of English had been acquired only since coming to the UK and did not accept that she had had the limited education she claimed.

7. The judge, however, accepted that the appellant spoke some Kibajuni, that her claim that her father was a fisherman was consistent with the reports of the Bajuni tending to work as fishermen and noted that her aunt had been accepted in the UK as a Somali national. She considered that, despite the serious credibility concerns expressed, those matters were sufficient to show

that she was a Somali Bajuni and she therefore accepted that that was the case. Applying the country guidance in KS (Minority Clans, Bajuni, ability to speak Kibajuni) Somalia CG [2004] UKIAT 00271, the judge found that the appellant would be at risk on return to Somalia on the basis of being a member of the Bajuni clan and a young lone woman with no family support. She accordingly allowed the appeal.

8. The respondent sought permission to appeal to the Upper Tribunal on two grounds. Firstly, that the judge had erred in her treatment of the Sprakab report and by finding that the appellant was a Somali national despite the findings in the Sprakab report. Secondly, that the judge had failed to resolve material matters such as the various credibility issues raised and the appellant's place of birth.

9. Permission was granted by the First-tier Tribunal on those grounds, with a further observation that the judge had failed to consider internal relocation to Mogadishu in the light of MOJ & Ors (Return to Mogadishu) (Rev 1) (CG) [2014] UKUT 442.

10. The matter then came before me for a hearing. Both parties made submissions.

11. Ms Young submitted that there were two grounds of appeal. Firstly, the judge had erred in the way she dealt with the Sprakab report. Ms Young referred to the explanation at page 3 of the Sprakab report about the analysts' experience and qualifications and submitted that the judge had failed to consider that. Had she had concerns about the report, the judge ought to have raised those at the hearing. The judge had not properly considered the conclusions of the report and had given no proper reasons for according the report no weight. Secondly, the judge had erred by failing to make a finding on the appellant's place of birth. As for the observation made in the grant of permission, that the judge had failed to consider the issue of internal relocation to Mogadishu, Ms Young submitted that she had spoken to the presenting officer at the hearing who had advised her that the matter had been raised before the judge. The judge ought therefore to have considered it.

12. Ms Awan, relying upon her rule 24 response, submitted that the judge had made adequate findings on the Sprakab report in accordance with the guidance in Secretary of State for Home Department v MN and KY (Scotland) [2014] UKSC 30, in which it was held that such reports were not infallible. Adequate reasons were given by the judge and she was entitled to give the report the limited weight that she did. She had looked at the analysis in detail and had given cogent and logical reasons for her conclusions. The judge was not required to make a finding on the appellant's place of birth when the undisputed fact was that the Secretary of State had accepted that the appellant's aunt was a Somali national. As for the question of internal relocation, Ms Awan said that she was in the Tribunal's hands.

Discussion

13. I find myself in agreement with the submissions in the appellant's rule 24 response and with Ms Awan's assertion that the grounds are little more than a disagreement with the judge's properly made findings and conclusions and a disagreement with the limited weight that she accorded to the Sprakab report.

14. Ms Young, in her submissions, relied upon the preamble to the Sprakab report, at page 3 (page 113 of the Home Office bundle), where details were provided about the recruitment and testing of the analysts. She also relied upon page 7 of the report (page 117 of the Home Office bundle) where details were given about the relevant analyst, Analyst 249. She submitted that Judge Khan had failed to give proper consideration to those aspects of the report. However, it seems to me that, on the contrary, the judge's assessment of the report was a thorough and careful one and that she gave detailed and cogent reasons for according it the limited weight that she did.

15. At [32] of her decision, the judge noted that the report acknowledged the appellant's use of some words and phrases of the Swahili dialect of Kibajuni and at [35] that the report acknowledged that the appellant had used some Kibajuni words, but that it failed to elaborate on the appellant's use of such words and phrase, and provided only a limited number of examples of her use of Swahili differing from the Kibajuni dialect. At [33] and [34] the judge gave reasons for her concerns about the analyst's level of expertise in the Kibajuni language. The judge properly considered these concerns in the context of the guidance in Secretary of State for Home Department v MN and KY (Scotland) [2014] UKSC 30 and RM (Sierra Leone) v The Secretary of State for the Home Department [2015] EWCA Civ 541, both of which emphasised the need for a "critical analysis" of the reports and a consideration of their weight "on a case-by-case basis". It seems to me that the judge was perfectly entitled to accord the weight that she did to the Sprakab report and that she provided full and cogent reasons for doing so. I reject Ms Young's suggestion that the judge ought to have put concerns to the presenting officer at the hearing or that the judge ought to have given weight to the absence of an expert report from the appellant. The judge considered the evidence before her and was required to make her findings on that evidence and on the submissions made before her. She was not required to put each and every concern to the parties.

16. Neither was judge required to accept the Sprakab report on its face, as Ms Young properly acknowledged. What she was required to do, in accordance with the relevant guidance, was to take it into consideration together with all of the evidence. That is precisely what Judge Khan did, giving full and cogent reasons for the weight that she attached to the various parts of the evidence. She was fully aware of, and provided details of, various credibility issues which were of concern, such as the appellant's level of education and the nature of her relationship with the child arriving with her. She gave cogent reasons why she was not prepared to accord weight to the appellant's birth certificate. Judge Khan also provided cogent reasons why she was not holding various matters against the appellant, such as her lack of knowledge about Somalia and about the Bajuni clan. She then referred to various factors which supported the appellant's claim and found ultimately that there were sufficient matters which supported the appellant's claim to be a Bajuni to outweigh the concerns she

otherwise had. Those matters were the fact that the appellant's SEF interview was conducted in Bajuni Swahili, that the Sprakab report acknowledged the appellant's use of some words in Bajuni (without elaborating on the extent of such usage), that the appellant's account of her father's and stepfather's role as fishermen was consistent with the work of Bajunis and, most significantly, that the appellant's aunt had been accepted by the respondent as being a Somali national.

17. As for the respondent's challenge in the grounds to the judge's failure to make a finding on the appellant's place of birth, it seems to me quite clear that, whilst not expressly stated, the judge accepted the appellant's account of coming from Kismayo. That is apparent from her reliance upon the case of KS at [47] of her decision where she referred to Kismayo. Indeed, there was never any other place of birth suggested if the appellant was accepted as a Somali national and it seems that the respondent's challenge in that respect may well have arisen from the mistaken belief (as stated in the grounds) that the birth certificate gave her place of birth as Mogadishu. Ms Young accepted that that was an error, since the birth certificate referred to the appellant's place of birth as Kismayo.

18. Accordingly, it seems to me that the judge gave full and proper consideration to all relevant matters and undertook a detailed assessment of the evidence, giving cogent reasons for according it the weight that she did. She was perfectly entitled to accept the appellant's claim to be a Somali national of Bajuni ethnicity and to find that she would be at risk on return to Somalia as a young lone female with no family support. For the reasons given I do not, therefore, find the respondent's grounds to be made out.

19. The last issue, namely the judge's failure to consider internal relocation to Mogadishu, did not form part of the respondent's grounds of challenge and neither was it raised in the refusal decision or the Respondent's Review, which only addressed the case on the basis of the appellant being a Tanzanian national who would be returned to Tanzania. The issue arose only from an observation made by the First-tier Tribunal Judge who granted permission to appeal to the Upper Tribunal and I approach that with some caution given the decision in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 245 and Durueke (PTA: AZ applied, proper approach) [2019] UKUT 00197. Ms Young informed me that the Home Office Presenting Officer who had appeared before Judge Khan had told her that she had raised the matter at the hearing, but she had no written notes to confirm that. I note that the judge recorded at [45] of her decision that the presenting officer did not make any submissions on KS and it was therefore clearly the judge's view that there was no question of the appellant being returned to Mogadishu. In light of her findings on the appellant's status as a lone young woman from a minority clan with no family or other ties to Somalia, who had left Somalia at the age of 12 years, I cannot see how any material error arises in that regard and I see no reason why the judge's decision should be set aside.

DECISION

20. The Secretary of State’s appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law, such that the decision has to be set aside. I do not set aside the decision. The decision to allow Ms Amour’s appeal therefore stands.

Signed: S Kebede Dated: 17 May 2022
Upper Tribunal Judge Kebede