



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No: HU/06223/2017

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 January 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SAWSAN NASIR MOHUMED
(anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Q Ahmed, Counsel instructed by Bond Adams LLP Solicitors
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer
Interpreter: Mr Y D H Osman interpreted the English and Somali languages

Heard at Field House on 7 June 2022

DECISION AND REASONS

1. This appeal has a long history. At some stage an anonymity order was made. I see no need for it and, if it has not already been discharged, I discharge it.
2. The appellant is a citizen of Somalia. She had previously appealed successfully a decision of the Secretary of State on 27 April 2017 refusing her leave to remain on human rights grounds but the decision was set aside and a rehearing ordered by me. In the circumstances I revert to the original description in which the claimant is described as in the title here as “the appellant”.
3. The essential point in the case is whether the appellant could return safely to her country of nationality or whether there are insurmountable obstacles in the way and if, in all the circumstances, removal would contravene her human rights.

4. The appellant attended before me and gave evidence, adopting a statement dated 16 June 2019 but it is similar to a statement dated 25 January 2018. I summarise that statement now.
5. There she confirmed that she is a national of "Somaliland" and lived with her husband at an address in the East Midlands. She also adopted her husband's witness statement of 26 January 2018 which I consider below. She said it was relevant that they come from different countries. She is from Somaliland and her husband is from Somalia. These places are no longer to be regarded as one entity and there are tensions or worse between the various tribes and castes in those countries. Further, she contended that the situation in Somaliland is not stable and if she returned to live there she would risk being kidnapped. It was thought that people from the United Kingdom must be well-off and they were natural targets.
6. The appellant said that she had been living with her husband since they arrived in September 2012 and wanted to adapt into British society. They also hoped to have a baby and help with that was more readily available in the United Kingdom. The appellant explained that her husband had given up smoking and was trying to get fit to help.
7. The appellant explained how upset she was when the original decision was set aside. They were well settled in the United Kingdom and living respectably.
8. In answer to additional questions she said she was from the Isaaq clan and gave her nationality as "Somalilander". She said the Isaaq clan was the majority clan in Somaliland.
9. When she left, she left behind her mother, father and two married sisters and two teenage siblings. She was in touch with them all. She had left Somaliland when she was aged 20. She never worked in Somaliland.
10. Her family were all in Hargeysa and tried to support themselves but are helped financially by her husband. He had started helping financially after they married in 2010. Before then an uncle had helped but he had died. Her husband sent between £200 and £250 a month.
11. The appellant had never been to Mogadishu. She was frightened of Mogadishu, it was not a stable place and to someone from Somaliland.
12. The appellant said that her passport had expired and she tried to renew it but there were problems because her passport did not have a "chip" and she had not been able to renew it. She said it was difficult to get a job in Somaliland especially as she was not a graduate. She had no family members working in Somaliland and her husband did not have any family at all except two male cousins. She did not think that they would make a home for them or otherwise support them.
13. When her husband came to Somaliland to marry her he stayed for about two months and the marriage was registered in Somaliland.
14. Her husband was British. She said that he had problems in Somaliland because of his clan. His family consented for her to marry outside her clan. There was no problem with the immediate family but it was socially unusual. Friends and neighbours were not happy with the marriage.
15. She was cross-examined.
16. She confirmed that she had married in Somaliland and she confirmed that her husband had stayed with her for about two months after they married. He came for a holiday and to get married and did not work.

17. Two "main cousins" of her husband came to the wedding but he did not have any close relatives who attended. She did not know of any close relatives in Somalia. She was pressed about this. She said they were from different clans, they did not get along and her family did not support the marriage. Her husband had one sister but his parents were dead. He was in contact with his sister who lived in Sweden. She had never met her sister-in-law. She said that when they came for the marriage they stayed in Somaliland and her husband did not leave immediately.
18. The appellant was asked if they discussed what would happen if she had to return to Somalia. She said that they agreed to be separated to live in different places. She could not go to Somalia. She said she could not live there. Her husband would not go, he has not been there for a long time.
19. The appellant was asked why she just did not go and then make an application to return but she said she was frightened. She could not explain why she did not feel safe in Somalia with her husband's support but she had been away for some time. She said that living apart like that is something they did not wish to do but if that had to be that is what they would do. She said she would apply to join her husband but they would be living in two different places until then. They had discussed going together and making an application but had not done it. She said again she did not know anyone in Somalia and there was no one to help her.
20. It was suggested to her that if she made an application she could perhaps stay with her husband's or her family while the application was proceeding and said she had discussed that with her husband and she would go back to live with her family if that is what they had to do. Her family were aware of the appeal. She said she had not met her husband's relatives but he had met hers and there were two cousins who came to see her.
21. She was not re-examined.
22. I asked her if she could explain why she could not go back rather than simply did not want to go back and she did not want to be parted from her husband.
23. The appellant said that when she applied for a visa in 2011 she had to get documents but she travelled to Ethiopia to do that.
24. The appellant's husband, Ebrahim Yusuf Adan gave evidence. He adopted the statement made on 16 July 2019. This is very similar to his earlier statement.
25. He confirmed that the appellant was his wife and that they had been living together as husband and wife since she came to the United Kingdom in September 2012. He said she entered the United Kingdom on a "spouse visa" which she had obtained from the British High Commission in Nairobi.
26. While she was on her "probation period" as a wife she booked the required English language test with the appropriate application. However, her passport from Somaliland expired on 31 January 2014 with the result that she was not permitted to sit the examination as she did not have the required identity documents. He said that his wife was not able to get a new passport because they were issuing "chipped passports" which could only be issued from Somaliland and it was just not possible to renew the old passport. He repeated that the advice from the Somaliland Consulate in London was to go to Somaliland and get the passport chipped and then come back.
27. His wife made applied for further leave after her leave had expired by then. The application was late because she had been trying to take the English language and Life in the UK tests in order to support her application.

28. Her application was refused on 4 August 2014. It could not be allowed because there was not an English language test certificate in the required form.
29. His wife later obtained the qualification in Information Communication Technology at entry level 3 could not obtain the required test certificate because she could not prove her identity in the required way.
30. The Home Office were approached and asked to reconsider the case on human rights grounds.
31. Their solicitors tried to obtain a new passport from the Somaliland Consulate but got the same answer. Further information was requested and not much happened.
32. He confirmed that he was in regular work, then earning in excess of £20,000 a year gross. He said his wife was from Somaliland and:

“We both cannot go back and live either in Somalia or Somaliland due to the internal dispute between the two countries. The political situation in Somalia and/or Somaliland is not very stable and I still do not feel safe living in Somalia with my wife who holds nationality of Somaliland. It would be very hard and difficult for me to return and live in Somaliland with my wife as I am from Somalia”.
33. He then gave evidence similar to his wife about their efforts to become pregnant.
34. He concluded his statement by pointing out that he is a British citizen lawfully in the United Kingdom, working regularly and establishing himself in the United Kingdom. He said he had eroded all his ties with Somali culture and social life and had no ties at all to Somaliland. He would not be able to get any help to establish themselves as a couple in either country and he regarded the efforts as “unduly harsh”.
35. In answer to additional questions he confirmed he had not returned to Somalia since 1995 but he was from the majority Abgal clan. That clan was not present in Somaliland. He said he had cousins in Somalia, he described them as second cousins, and had last contact with them in 2009. He had no family of his own in Somaliland, although they were cousins on his mother’s side he did not know their clan but knew that their mother was Abgal like him.
36. He went to Somaliland for seven weeks to get married and that was the only time he stayed in Hargeysa with his wife.
37. He said the marriage was registered without difficulty and he was not asked by officials about his clan but he did have problems as a result of the clan during his short stay there. There was “name calling” as soon as people knew he was from Somalia from family members of his wife. His wife did have close family members in Somaliland, her mother, father, two sisters and two brothers and they did not call him names.
38. He supported the family in Somaliland by sending between £250 and £300 every month. He had started doing that since his marriage. He said it would not be possible for him to work in Somaliland with his wife. She would have to go and live on her own. He said the United Kingdom was his home and it would be difficult going to Somaliland but he found it difficult to articulate specific reasons although there were poor job prospects and he feared that he might face discrimination. He knew what had happened in their visit when he did face discrimination and he understood the reasons for that arising from the split of the countries.

39. He confirmed he was working with Amazon.
40. He was cross-examined.
41. He said that he had discussed what would happen if his wife had to go to Somalia to make an application. They decided that it would be very difficult to maintain her while over there, he would have to finance another application. He was asked what he meant by "difficult" and he said it was mainly financial but he did not want to be separated from his wife.
42. He was asked if he would save money to facilitate such a transfer application and he said that they had not come to an agreement and they had to pay a solicitor and that made inroads on their finances.
43. He was asked if it was fair to suggest that if his wife went back the main problems would be financial difficulties and he said it was going to be difficult, it would be a financial drain.
44. He said that he could not contemplate an extended stay with her because that would require leave from work which he did not want to take even if he could get it. He was asked if his wife went to Somalia and did make an application would he be able to visit her if things were delayed and he thought that feasible but it would be financially difficult.
45. There were no questions from me.
46. There is a considerable body of written evidence before me. Much of it relates to matters that are not in contention and so do not need comment.
47. The refusal letter is dated 2 May 2017. The Secretary of State went through the well-known statutory exceptions and concluded, I find correctly, that the most relevant was Exception 2 which required there to be a genuine and subsisting relationship with a partner in the United Kingdom and "insurmountable obstacles to family life with that partner continuing outside the United Kingdom" and the letter included a well-known warning that insurmountable obstacles should not be interpreted absolutely but as very significant difficulties. The letter made the point that the appellant and her husband chose to enter into the relationship knowing that that did not guarantee her a right to live in the United Kingdom but she entered with limited leave understanding that her status was precarious. The appellant had overstayed and she should go back and make the application in accordance with the Rules. It was noted that the partners to the marriage had maintained their relationship from overseas for a time and it was suggested they could go and do it again. Neither was it accepted that there would be insurmountable obstacles to her husband relocating with her.
48. The "private life" claim was modest and really added nothing.
49. Ms Lecointe relied on additional documents submitted on the day of the hearing, being essentially background material about conditions in Somaliland. This included a CPIN dated May 2020 which said at paragraph 2.4.1:

"There are not substantial grounds for believing the general humanitarian situation in Mogadishu is so severe that there is a real risk of serious harm because conditions amount to torture or inhuman or degrading treatment as set out in paragraphs 339C or 339CA(iii). However decision makers must consider whether there are particular factors relevant to the person's individual circumstances which might nevertheless place them at risk".
50. Ms Lecointe submitted there were none. Ms Lecointe said that it was accepted there was some family, they could be expected to support her while an application was made, that was all that was required and she should do it.

Similarly, she did not accept that the appellant had shown her husband could not join her in Somaliland. There would be difficulties but they were not insurmountable obstacles. There really was no likelihood of serious harm.

51. Mr Ahmed addressed me. He based his submissions primarily on the decision in **Chikwamba [2008] UKHL 40**. This was explained very well in a skeleton argument prepared by Ms A Imamovic for the First-tier Tribunal. I return to this below.
52. He submitted that it was not practicable to think in terms of the appellant's husband going to live in Somalia. He had not lived there for many years and it was very difficult to see how he could make a living there. Neither could he go to Somaliland. He had coped when he went to marry for a period of seven weeks but he had had difficulties which pointed to it being very hard for him to establish himself there.
53. He also said there would be no family support for the appellant in the event of her return to Mogadishu. She would have support in Somaliland but she would have to get there.
54. I accept that it is unlikely that the appellant's husband would be able to obtain citizenship in Somaliland. This is supported by paragraph 6.2.2 of the Country Background Note, Somalia dated December 2020. This does not completely prove that the appellant's husband would not be registered but it makes it plain that citizenship is granted by patrilineal descent from people living in Somaliland and that is not a qualification enjoyed by the appellant's husband.
55. I am impressed with the reminders in that report and other sources of the poverty that is experienced by many Somalis. Again the UN Somali Common Country Analysis of 2020, which is the material before me, estimated that nearly 70% of Somalis live in poverty. Poverty in that part of the world is biting and real.
56. I also accept that the appellant would have to be removed to Mogadishu, there are no mechanisms for removing elsewhere. The CPIN for May 2022 confirms that return is normally to Mogadishu. In some cases people can be returned to Puntland or Somaliland if they are formerly resident and have clan connections in those areas but it does not seem to be suggested that the appellant could be returned to Somaliland.
57. I now sit back and reflect on the evidence before me. I am entirely satisfied that I have, broadly, been told the truth. There may be an almost irresistible and subconscious temptation to exaggerate the difficulties on return because the appellant plainly does not want to return but neither she nor her husband were shown to be unreliable in any way in the evidence that they gave. It is a feature of the case that they had not exaggerated the difficulties where it would have been easy to do that if they were unconcerned about telling the truth. For example, they admit that there are some family ties although described them in ways that show they are now rather weak. A dishonest person could have denied them and that is not what has happened here.
58. It is also, I find, an important feature of the case that the appellant entered the United Kingdom lawfully. This is not somebody who has evaded immigration control by coming into the country on one pretext when all along something else was planned. She entered as a partner, her leave ran out. The appellant must accept some responsibility for her leave running out although I accept the evidence that she gave. She said that she could not get her English language test because she had let her passport run out but she did not know how to renew her passport. I must think rather hard about that. The respondent has not

provided any assistance (I am not suggesting that he should have done, simply recording that he has not) but I am satisfied that genuine efforts were made by the appellant's solicitors to find out about renewing the passport and they drew a blank. Whether the appellant would be given a travel document to Mogadishu is a matter of conjecture on my part but I do not assume that that would be done.

59. What I am satisfied about is that the appellant's overstaying was not the result of wanton disregard for the Rules but more an inability to comply with them because she did not know how to renew her passport in time. It is a discreditable element of the case but must be evaluated very differently from the discreditable elements that come by people who lie and cheat. This is not what has happened here.
60. I am quite unpersuaded that there is any realistic prospect of return to Somaliland directly. I accept that the appellant if returned to Somalia would in theory be able to find temporary accommodation and would in theory be able to make an application from somewhere to come back to the United Kingdom. I have seen the appellant. I do not see her managing on her own in Somalia. Neither do I accept there is any real likelihood of anybody supporting her. Family links are tenuous and she is not an approved wife. I have no basis for saying there would be anyone willing to help.
61. Neither do I accept that her husband could or should be expected to go and stay with her. We do not know how long he would have to go for. Although he is in regular work doing a perfectly respectable and socially useful job he is not very well paid and I accept his evidence that it is not realistic to think in terms of extended leave. If he loses his job the appellant cannot meet the financial requirements of the rules. I do not know how long an application would take but I doubt that it could be completed within the appellant's husband's annual leave and she would be on her own if he returned.
62. Further, the family in Somaliland depend on his money. We do not know how they would react if that source dried up and it would if he had to extend his leave.
63. It is important sometimes to sit back and remember that things that are typical in a rich Western country are not typical of the whole world. Returning the appellant to Mogadishu would not be remotely similar to, for example, returning a national of France to Paris. The organisation in society is very different. Individual lone women are not encouraged or not usual. The appellant would be an outsider because she comes from Somaliland. I do not say that she would be persecuted but she would be odd. She could have family support if she got to Somaliland but she could not get there without help. There is no obvious route for help. It may be that her husband's relatives would be of assistance but why should they? Family links are not strong and although the marriage was attended by members of both families it was not a marriage that is normal by Somali standards. It is interclan marriage that is not something of which is approved. It would be difficult for her. The difficulty would be exacerbated by reason of being an outsider in Mogadishu. She could not be supported by her husband. He could not go for long enough. I am not convinced that these things are properly described as insurmountable obstacles but they are getting close and for the purposes of this decision because I have to make decision I find that they are.
64. However, I also remind myself that this is essentially a claim brought on human rights grounds. The appellant is lawfully married and entered the United Kingdom lawfully. I have indicated that I find this important. It is a genuine relationship and one which would appear to satisfy the requirements of the Immigration Rules for entry. The appellant had not shown at the material time

that her language was sufficiently good and she did ask for an interpreter at the hearing before me. This does not mean she is not making efforts to learn English. There is considerable difference between having sufficient English to manage socially and giving evidence where precision in language might be very important. I am entirely satisfied that she wants to settle in the United Kingdom, and by that I mean to integrate and establish herself in the United Kingdom, and indeed has made efforts to achieve that. Removing her would clearly interfere with her private and family life and that of her husband and it would be very much at the “family life” end of the “private and family life” continuum. This is permissible but has to be justified. The obvious justification on the part of the Secretary of State is that that is the Secretary of State’s policy. I need to be very careful here. It is not the role of the judge to remodel the policy but the judiciary do have a residual role in ensuring that the policy does not produce disproportionate consequences. There are so many unknowns here. I do not know even that the appellant would be able to be returned. Requiring her to go does, I find, start to look like Rules for the sake of Rules rather than Rules for the sake of giving effect to policy and this was the approach that I think the House of Lords was criticising in **Chikwamba**. The appellant is not a woman with a bad immigration history. It is not a perfect immigration history but I have already commented on that. She got in a muddle because she did not know what to do. She was not trying to cheat the system. Taking into account the time she spent in the country and the considerable difficulties that would be presented by her going back to Somalia I have decided that I must grasp the nettle and conclude that it would, in her case, even if outside the Rules be a disproportionate interference with her private and family life. The Rules would cause a high degree of hardship to people whose only error is to be unsure what to do when their passport was running out. This is wrong and undesirable but not heinous. In all the circumstances I decided to, and I do, allow this appeal.

Notice of Decision

65. This appeal is allowed on human rights grounds.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 January 2024