



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003119

First-tier Tribunal No: PA/55354/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of January 2025

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

NHE
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Jacobs, Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Ms Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 2 September and 9 December 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. The appellant is a citizen of Somalia (from Somaliland) with six children, who entered the UK in January 2010. On arrival in the UK she applied for asylum, claiming to face a risk from her first husband and his family. Her application was refused and, in June 2010, her subsequent appeal was dismissed.

2. In September 2014 the appellant applied for asylum using a different identity, claiming that she was raped, and her husband abducted, by members of Al-Shabab. In January 2015, she was granted asylum under this identity.
3. She then brought her six children to the UK under the Family Reunion Rules. Four children came to the UK in 2016 and two in 2017. Their dates of birth range from December 1998 to March 2004. All are now adults.
4. On 10 December 2019 the appellant applied for indefinite leave to remain under the settlement protection route, listing her six children as dependents.
5. Following this application, it came to light that the appellant had claimed asylum using two different identities. The appellant accepts that her second account (which is the basis upon which she was granted asylum in 2015) was fabricated.
6. On 21 December 2021 the respondent revoked the appellant's refugee status under paragraph 339AB of the Immigration Rules.
7. In a decision dated 14 January 2022, the respondent refused the appellant's settlement protection application and human rights claim made on 10 December 2019. Although the decision is addressed solely to the appellant, under the subheading "dependants", brief reasons are given as to why it is reasonable for each of the appellant's six children to return to Somalia.
8. The appellant appealed to the First-tier Tribunal where her appeal came before Judge of the First-tier Tribunal Maka. By a decision dated 20 March 2023 Judge Maka dismissed the appeal. The appellant appealed against Judge Maka's decision to the Upper Tribunal where, in a decision promulgated on 13 June 2024, I set aside the First-tier Tribunal's decision in respect of article 8 ECHR and directed that the decision, in respect of article 8 ECHR, would be remade at the resumed hearing in the Upper Tribunal. As there had not been a successful challenge to Judge Maka's findings in respect of the revocation of the appellant's refugee status and her protection claim, I decided that those aspects of Judge Maka's decision would stand.
9. The remaking of the decision took place over two days: on 2 September 2024 and 9 December 2024. The reason the hearing could not be concluded on 2 September 2024 was that the appellant was unable to complete giving oral evidence due to poor health and the limited availability of the interpreter.
10. On 2 September 2024, oral evidence was given (in person) by the appellant's six children and the appellant's oral evidence was part heard. On 9 December 2024 the appellant gave evidence remotely (permission to do so having been given by the Upper Tribunal). The appellant, who gave evidence through an interpreter, was a vulnerable witness. I have had regard to her vulnerability both when she gave evidence and in assessing the credibility of her evidence.

Issues not in dispute

11. The following is not in dispute:
 - (a) The appellant was granted refugee status as a result of using a fabricated identity and account. She was able to bring six children to the UK as a result.

- (b) The six children the appellant brought to the UK (all of whom are now adults) are her children and live with her in the UK.
- (c) The appellant suffers from a serious rare autoimmune condition for which she requires long term immunosuppressive therapy and other medication, and requires life-long close monitoring and specialist care. She receives multidisciplinary input under the care of a specialist centre in London. This is set out in a letter from her consultant respiratory physician dated 31 October 2024 and a GP letter dated 30 August 2024. She also suffers from anxiety and depression.

Issues in dispute and findings of fact

12. There is a significant gap in the medical evidence, as the appellant has not adduced any evidence addressing (a) what treatment, medication and ongoing monitoring, if any, is available (and if so, at what cost) in Somalia for her condition; and (b) what the consequence would be of not accessing her current treatment or replacing it with what would be available in Somalia. I note that the absence of such evidence was noted at the hearing on 2 September 2024 and the appellant was given the opportunity to obtain further evidence prior to the hearing on 9 December 2024, as set out in my Directions of 2 September. Mr Jacobs, in his submissions, stated that the appellant's solicitors have been trying to obtain evidence about medication and treatment for the appellant's condition in Somalia. However, as he acknowledged, not only was there no evidence concerning treatment in Somalia before me, there was no evidence demonstrating that efforts had been made to obtain such evidence. Indeed, the appellant's evidence (and that of her children) was that none of them have made any enquiries about medication or treatment in Somalia. Moreover, Mr Jacobs did not seek an adjournment to obtain evidence. Accordingly, I find that it has not been established by the appellant, upon whom the burden of proof lies, that it is more likely than not that she would be unable to obtain treatment and medication in Somalia that would be sufficient to adequately manage her physical and mental health conditions.
13. The respondent's position is that the appellant's children have no lawful basis to be in the UK and could (and are expected to) return to Somalia with the appellant. The appellant's position is that her children are well integrated in the UK and would not willingly accompany her to Somalia. The evidence of all of the appellant's children is that they are integrated into the UK and would not voluntarily return to Somalia, even if that meant that their mother would be alone in Somalia. I consider it to be more likely than not that this is the truth. The impression I formed, after hearing evidence from all of the children, is that they have not even contemplated the possibility of accompanying the appellant to Somalia. Although the basis for the appellant's children to reside in the UK ceased when the decision was made to revoke the appellant's refugee status (as their status was dependent on that of the appellant), whether or not their removal would violate article 8 (or they have another lawful basis to remain in the UK) has not been determined by the respondent: the decision of 14 January 2022 was addressed only to the appellant. As acknowledged by Ms Lecointe, the position of each of the children remains to be determined. It follows that it is more likely than not that the appellant will be returned to Somalia without her children, who would not be forced to leave the UK with her and would not do so willingly. Moreover, I find that the children will not travel to Somalia for a short period to assist with the appellant's relocation. This is because, at the time of

their mother's removal, they would be unlikely to have leave to remain that would permit them to travel abroad and then return to the UK without facing a significant risk of re-entry being refused. Accordingly, I find that the appellant would be returned to Somalia alone; i.e. without any of her children accompanying her either permanently or for a short period.

14. The evidence of the appellant indicates that she is (and has been, throughout her time in the UK) involved with the Somali community and a mosque in the UK, from whom she has received support. I find that the appellant has retained a strong connection to Somali culture and religion.
15. The appellant relied on an interpreter and no evidence was submitted that she speaks or understands English. I find that the appellant does not speak or understand more than a very limited amount of English.
16. The appellant does not work and has received benefits. No evidence was submitted indicating that she is likely to be in a position to earn an income in the future. Accordingly, I find that the appellant is likely to receive financial support from the state if she continues to live in the UK. Given her health condition, she is also likely to make significant use of the NHS.
17. The appellant's evidence was that she does not have contact with anyone in Somalia, including her siblings (who she acknowledged live in Somalia); and that she has not contacted anyone (even at her mosque in the UK) to see if they could assist her (or put her in contact with people who could assist her) in Somalia. Her children's evidence was similar. Indeed, the evidence of one of her daughters was that her partner is Somalian (and has a mother and siblings in Somalia), but she has never discussed with her partner whether his family would be able to provide the appellant with any support. Ms Lecointe argued that the evidence of the appellant about contact with family (or others) in Somalia was not reliable, given her history of dishonesty. She submitted that, in any event, the appellant can reconnect (if she has not already done so) with family and friends from before she came to the UK. Mr Jacobs highlighted the consistency of the evidence of the appellant's children about the lack of contact with family in Somalia. I am satisfied that, on the balance of probabilities, the appellant's children gave a truthful account when they stated that they do not have contact with any family (or others) in Somalia and are not aware of their mother maintaining connections in Somalia. I also accept that the appellant does not maintain relationships with her family and friends in Somalia. However, I do not accept that the appellant would be unable to make contact with people in Somalia who would be able to provide her with a degree of support. The clear impression I have formed from the oral evidence is that the appellant and her children find it difficult to even contemplate the possibility of the appellant being removed and have not accepted that this is a realistic possibility. They have therefore not made enquiries about support that she could receive from, for example, her siblings, her wider family, people she knew before leaving Somalia, and contacts/friends/family of people she knows in the UK (such as her daughter's partner, and members of her mosque and the Somali community who have previously supported her in the UK). I find that it is more likely than not that the appellant, due to her connections to Somalia and to the Somali community in the UK, will be able to make contact with family, friends or others who will be able to provide her with some support in Somalia.
18. Only one of the appellant's six children currently works. The others currently face difficulties finding employment because of their immigration status. The

evidence indicates that the family are very close and that the appellant's children are committed to supporting the appellant (although not to the extent of returning to Somalia with her). I find that the appellant's children will provide financial support to the appellant to the extent they are able.

Analysis

19. The human rights appeal before me concerns only article 8 ECHR. It was not argued that removal of the appellant would violate article 3 (or any other article) of the ECHR.
20. The appellant argues that she meets the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules because she would face very significant obstacles integrating in Somalia. I am not persuaded by this argument. The appellant is likely to face significant challenges in Somalia as a single female with significant health problems. However, it has not been established that she would be unable to receive adequate treatment and medication in Somalia or that she would be without any support from family or others. Moreover, I do not accept that she would face difficulties integrating given her familiarity with the language, culture and society, and that whilst in the UK she has maintained her connection to Somalia and its culture through her involvement with Somalians in the UK and her mosque. Accordingly, the requirements of paragraph 276ADE(1)(vi) are not satisfied.
21. I now turn to article 8 outside the Rules, which was the focus of Mr Jacobs' arguments.
22. I am satisfied that the appellant has a private life in the UK, having lived in the country for a significant period of time. She also, in my view, has a family life engaging article 8 with her adult children that would be disrupted by her removal.
23. The question to resolve is whether removal of the appellant would represent a disproportionate interference with her family and private life in the UK. In order to address this, I have adopted a "balance sheet approach", as recommended in *Hesham Ali v. Secretary of State for the Home Department* [2016] UKSC 60, where I have incorporated the considerations set out in section 117B of the Nationality Immigration and Asylum Act 2002.
24. The following weighs against the appellant:
 - (a) The maintenance of effective immigration controls is in the public interest: see section 117B(1) of the 2002 Act. I attach very significant weight to this consideration because the appellant obtained leave as a refugee as a result of providing a false identity and account. The integrity of the UK's immigration system and the public interest in the maintenance of effective immigration controls is undermined, to a significant extent, by dishonesty of this nature.
 - (b) It is in the public interest that people seeking to remain in the UK speak English: see section 117B(2) of the 2002 Act. This consideration weighs against the appellant because she does not speak English. I attach some weight to this consideration.

- (c) It is in the public interest that people seeking to remain in the UK are financially independent: see section 117B(3) of the 2002 Act. The appellant has received benefits and is unlikely to earn an income. This public interest therefore weighs against the appellant, and I attach some weight to it.

25. The following weighs in favour of the appellant:

- (a) The appellant has developed a private life in the UK. However, section 117B(5) of the 2002 Act requires that only little weight be given to a private life established when a person's immigration status was precarious. It is well established that this can be overridden in exceptional circumstances: see *Rhuppiah v. Secretary of State for the Home Department* [2018] UKSC 58. However, it was not argued before me (and the evidence does not indicate) that there are features of the appellant's private life in the UK that would warrant attaching more than a little weight to it. Accordingly, I give only little weight to the appellant's private life in the UK.
- (b) The appellant has a family life in the UK with her six children. Her family life with them existed before they came to the UK and has particularly strong features, including that the family live together, pool financial resources and provide each other with emotional and other support. The disruption to family life that would arise from the appellant's removal is likely to have a significant negative effect on all of the family, and I attach significant weight to this consideration in the proportionality assessment.
- (c) The appellant is likely to face significant challenges in Somalia as a single female with significant health problems but not to the extent that she will face significant obstacles integrating. I adopt the reasoning given in paragraph 20 (where paragraph 276ADE(1)(vi) is considered) and attach weight to this as a consideration in the appellant's favour.

26. I am satisfied that the balance falls firmly on the side of the respondent. This is because, for the reasons I have given in paragraph 24(a), I have attached very considerable weight to the public interest in the maintenance of effective immigration controls. The factors weighing on the appellant's side of the scales are significant and I attach considerable weight to them. However, considering them cumulatively they are still insufficient to outweigh the weight I have given to the public interest identified in paragraph 24(a).

Notice of Decision

The appeal is dismissed.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 January 2025