



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
AA/11806/2014

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 September 2015**

**Decision & Reasons  
Promulgated  
On 6 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**KSH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation**

For the Appellant: Mr Harding, Counsel instructed by Fadiga & Co Solicitors  
For the Respondent: Mr P. Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant.

This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant is a citizen of Somalia born on 1 January 1942. In a decision promulgated on 10 April 2015, the First-tier Tribunal dismissed the appellant's appeal against the respondent's decision to refuse her application for asylum or humanitarian protection. The Tribunal also found that removing the appellant from the UK would not contravene Article 8 of the ECHR.
3. The appellant entered the UK on 25 September 2013 and claimed asylum. The respondent did not accept most of the appellant's account of her background or the reasons she gave for claiming she was persecuted and would be at risk upon return to Somalia. In particular, the respondent did not accept that the appellant was a member of the Asharaaf clan, that she had been persecuted by Al Shabab, and that she would lack support from family and friends upon return to Somalia.

#### First tier Tribunal decision

4. The appellant's appeal was heard by First Tier Tribunal Judge Black ("the judge"). The judge found the appellant to be largely credible although to have exaggerated certain parts of her claim. She found, inter alia, that:
  - a. the appellant is a member of the Asharaaf clan, which is known for religious activity;
  - b. she lived principally in Kismayo, apart from periods when she left to avoid fighting;
  - c. she and her family had been affected by local violence and disturbances caused by Al Shabab in the five years before her departure including shelling and destroying of her home and an attack on a mosque where she was praying; and
  - d. the appellant had been harassed by Al Shabab for not covering her face.
5. However, the judge did not accept that the appellant had been the victim of torture or that she had been targeted as a particular individual by Al Shabab. She also did not accept her claim to not have support in Somalia. The judge found that the appellant has relatives in Somalia, in the form of her husband's family and her own brother, as well as supportive neighbours in Kismayo who had accommodated and supported her before she left for the UK. At paragraph [40] the judge stated that she was:

*"satisfied that the appellant would have the support of family and friends, members of her clan, on return to Somalia, just as she did prior to her departure from the city."*

6. The judge also found, at paragraph [48], that:

*“there is a risk of sexual violence where women travel without male friends or relatives but in this case the appellant has friends and relatives in Somalia and, since they have given her support in the past, I find that they would do so on her return”*

7. Having made these findings, and having referred to and considered *MOJ & Ors (Return to Mogadishu) Somalia CG [2014] 00442 (IAC)* and *AMM and others (conflict, humanitarian crisis, returnees, FGM) Somalia CG [2011] UKUT 445 (IAC)* the judge concluded that the appellant was not entitled to a grant of asylum or humanitarian protection.
8. The grounds of appeal submit that the judge erred by failing to consider how the appellant would be able to travel from Mogadishu to Kismayo, which would be necessary for her to access the support described by the judge. They also submit that the judge had improperly equated sufficiency of support with protection and failed to consider the risk to the appellant as a female as set out in *AMM*.

### Submissions

9. Mr Nath, on behalf of the respondent, stated that he was ‘taking a view’ and that he accepted there was potentially an error of law in respect of the judge failing to give full and proper consideration to the risk the appellant would face in travelling from Mogadishu to Kismayo. He suggested that the appeal should be remitted to the First-tier Tribunal to be heard in its entirety afresh.
10. Mr Harding, for the appellant, argued that there was sufficient evidence available for the appeal to be remade in favour of the appellant. He referred to *AMM*, which is good law for all matters not specifically addressed in *MOJ*, where it states that:

*Travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence.*

11. Mr Harding argued that on the judge’s findings, the appellant would be a lone woman returning and therefore the risks as described in *AMM* above would apply. He also submitted that internal relocation to Mogadishu was not viable as the appellant would be a person of minority clan without access to support or funds with a real risk of having to live in an IDP camp. He referred to paragraph [425] of *MOJ*, which states:

*relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.*

### Findings

12. I find that the First tier Tribunal's decision contains an error of law in that the judge failed to give sufficient consideration as to whether, and if so how, the appellant would be able to travel from Mogadishu to Kismayo. This is a material error and accordingly the First-tier Tribunal's decision is set aside.
13. The journey from Mogadishu to Kismayo is critical to the asylum appeal because the protection and support the appellant is likely to receive upon return to Somalia, as described by the judge, is in Kismayo, not Mogadishu. Accordingly, in order to benefit from this support, the appellant will need to travel between the two cities. *AMM*, as cited above, makes clear the difficulties someone may face in undertaking such a journey, particularly where they are a lone female.
14. The judge did not ignore this issue. At paragraph [48] she refers to the risk of a woman travelling without a male companion but finds that the appellant has friends and relatives in Somalia who would help her upon return. And at paragraph [43] she states that the appellant's husband's nephew helped her travel to the UK and could help her upon return. However, the judge has not specifically addressed the question of how the appellant, in her particular circumstances, will travel from Kismayo to Mogadishu. In any event, I did not hear any submissions from Mr Nath in relation to this and it was clear his view, on behalf of the respondent, was that the judge had erred and the claim should be re-heard.
15. I have considered whether I can remake the decision based on the evidence and factual findings before me but find that I am not able to do so. In order to assess whether the appellant is in a position to travel from Mogadishu to Kismayo, a tribunal will need to consider a range of matters including in particular the appellant's state of health and the nature and extent of support she is likely to receive in order to undertake the journey to Kismayo. This will require a full hearing with oral evidence. Accordingly, the appeal is remitted to the First-tier Tribunal to be heard afresh.

### Decision

16. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside in its entirety and the appeal heard afresh.

17. The appeal is remitted to the First-tier Tribunal for hearing afresh before a judge other than First tier Tribunal Judge A M Black.
18. Anonymity order made.

Signed  
Deputy Upper Tribunal Judge Sheridan

Dated