



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001984
First-tier Tribunal No:
PA/50243/2020
LP/00267/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 July 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MJ
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Ms Z Young, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 19 July 2024

DECISION AND REASONS

1. The appellant is a citizen of Somalia, born on 6 December 1982. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her asylum and human rights claim.
2. The appellant arrived in the UK on 7 March 2016 and claimed asylum the same day. Her claim was refused on 19 May 2020. She appealed against that decision and her appeal is the subject of these proceedings.
3. The appellant claimed to be at risk of being killed by Al Shabaab because she had worked for the security section of the government in Somalia. She claimed to have

worked for the government in the Benadir region and to have received threats from Al-Shabaab as a result. One day in 2014 her sister was held at gunpoint as members of Al-Shabaab had mistaken her for herself. They told her sister, when they realised who she was, to tell her to stop working for foreigners or she would be killed. In May or June 2015 members of Al-Shabaab came to her mother's house searching for her. She and her brother managed to run but her brother was shot dead when he was trying to help her jump over the wall into her neighbour's house. She managed to escape and did not return to work. She remained in hiding until her sister made arrangements to leave the country in March 2016.

4. The respondent did not find the appellant's account to be credible. The respondent noted various inconsistencies in her evidence and observed that she was unable to give basic details about her job. Her account of managing to escape from Al-Shabaab was considered to be lacking in credibility. The respondent therefore rejected the appellant's claim to have had problems with Al-Shabaab and found that she was at no risk on return to Somalia. The respondent did not accept that the appellant's removal to Somalia would be in breach of her human rights.

5. The appellant's appeal against that decision came before First-tier Tribunal Judge Mack on 20 October 2021. The appellant was represented at that hearing by counsel, instructed by Parker, Rhodes, Hickmotts Solicitors. The judge, having regard to the evidence before her that the appellant had been diagnosed with complex post-traumatic stress disorder, considered her to be a vulnerable witness and treated her as such in accordance with the relevant practice directions and presidential guidance. The judge noted that the appellant's evidence for the appeal was that she had been raped by a number of militia members when she was 12 years of age and that she had been the subject of an arranged marriage to a much older man when she was 21 years of age. The appellant's evidence was that she had had four children with her husband and that they had separated in 2010, eight years after the marriage, and had divorced in 2011. Her husband initially took the children but she managed to get them back. She subsequently re-married in around 2014 and she and her husband stayed married until she fled Somalia, although she had not heard from him since then. The appellant claimed to have worked in a government office in Mogadishu from 2013 in a clerical position and had been threatened by Al-Shabaab as a result. She fled to the UK in 2016. Her children remained in Somalia with her mother. Her sister died in a bomb blast in 2018.

6. The judge noted that the appellant had produced a psychiatrist report and a country expert report for the appeal, both of which concluded that she would be at risk of serious harm on return to Somalia. She was diagnosed as having complex PTSD with co-morbid moderately severe depressive disorder which it was said had likely come from specific traumatic incidents including gang rape, physical and sexual violence, the murder of her brother, her sisters' death following a bombing, threats from Al-Shabaab and being the victim of an RTC in the UK in 2018. The respondent maintained before the judge that the appellant's claim was not credible and that she could access medical treatment in Mogadishu.

7. Judge Mack made various criticisms about the way in which the appellant's case had been prepared and presented which had resulted in a prior adjournment, on 13 September 2021, with directions for the appellant to file a witness statement together with a properly paginated appeal bundle, and for the respondent to conduct a review. The judge heard oral evidence from the appellant. She accepted that the appellant had been seriously sexually assaulted and had a diagnosis of PTSD but did not consider that that was necessarily related to her claim about Al-Shabaab. The judge

accepted that if the appellant was found to have worked for the government, then her account of threats from Al-Shabaab was plausible. However, the judge did not accept the appellant's account about how she came to work for the government and found it to be vague and inconsistent. The judge also found the appellant's account of her job to be vague and lacking in detail. The judge referred to the appellant's identity card being produced during the hearing, having not been produced previously, and she referred to the lack of other documentary evidence as a reason to doubt the appellant's credibility. The judge rejected the appellant's claim to have worked for the government and did not accept that she was targeted by Al-Shabaab. The judge found that the appellant would be at no risk on return to Somalia and that her return to Mogadishu would not breach her human rights. She accordingly dismissed the appellant's appeal, in a decision promulgated on 25 October 2021.

8. The appellant sought permission to appeal against the judge's decision on five grounds: firstly, that the judge had failed to take account of the appellant's vulnerability in her assessment of her credibility and her failure to provide documentary evidence; secondly, that the judge had failed to clearly state if she accepted the expert report and had otherwise failed to give reasons for rejecting it; thirdly, that the judge had failed to make an assessment of the appellant's mental health in light of the DH (Afghanistan) argument; fourthly, that the judge had erred in law in her assessment of whether there would be a breach of Article 3 under AM (Zimbabwe); and fifthly, that the judge failed to give anxious scrutiny to the appellant's case.

9. Permission was granted by the First-tier Tribunal on all grounds. The respondent did not provide a rule 24 response.

10. The Tribunal was subsequently informed by Parker, Rhodes, Hickmotts Solicitors that they were no longer representing the appellant and they were accordingly taken off the court record. There was no further contact from the appellant with the Tribunal and no response to directions issued by the Tribunal for the filing of an appeal bundle.

11. The matter came before me for a hearing on 19 July 2024. There was no appearance by or on behalf of the appellant. The court records showed that the notice of hearing had been properly served on the appellant herself at the last address provided. In the circumstances I saw no reason for the appeal not to proceed.

12. Ms Young advised me that she had concerns about parts of the judge's decision, particularly as to whether the judge, albeit referring to the presidential guidance for vulnerable witnesses, did not appear to take the appellant's vulnerability into account when making her adverse findings. That was in particular in regard to the judge's findings about the appellant's inconsistent evidence as to dates. Ms Young was also concerned that the judge had stated that she had not been provided with any evidence that medical treatment for PTSD was not available in Somalia, yet there was an expert report which provided such evidence and with which she had not engaged on that particular issue. Ms Young advised me that she struggled to say that there was no error of law in the judge's decision and she did not have an objection to the matter being remitted to the First-tier Tribunal for a fresh hearing.

Discussion

13. In light of Ms Young's concerns there is little that I need say further. Although the judge's decision is lengthy and detailed, the grounds properly identify that it is somewhat confused in parts and difficult to understand. There are very lengthy

paragraphs where it is difficult to ascertain which parts are references to the evidence and which are findings. Of particular concern is the matter raised by Ms Young, namely the judge's apparent failure to assess the inconsistencies and discrepancies in the appellant's evidence in the light of the medical assessment and her accepted vulnerability as a victim of various traumatic experiences. It is the case, as Ms Young accepted, that the judge referred to the presidential guidance on vulnerable witnesses, but it is also apparent that she found against the appellant on matters which she did not appear to consider could be explained by the appellant's vulnerability. Such concerns are particularised in the grounds at [6].

14. In addition, I find merit in the assertion in the grounds that the judge failed to make a finding on the expert report from Dr Hoehne and whether or not she accepted the report. The judge addressed the report in some detail, in particular at [33] and [38] to [39], noting at [33] that the respondent did not agree with the expert assessment and at [38] that Dr Hoehne found the appellant's account to be plausible. At [49] the judge found aspects of the appellant's account not to be plausible, but she did not refer to the expert report when concluding as such. It is therefore not clear what the judge made of the expert report and to what extent she took it into account when assessing the credibility of the appellant's account.

15. There is also the further concern raised by Ms Young in relation to the judge's assessment of the availability of medical treatment in Somalia for the appellant and her apparent failure to have regard to the evidence of Dr Hoehne, referred to at [58] to [59], when commenting at [64] on the lack of evidence that the appellant could not obtain medication in that country.

16. For all these reasons, and having regard to Ms Young's concerns, it seems to me that the judge's decision is not safe and ought to be set aside.

17. The appropriate course, in such circumstances, where there are concerns about the overall credibility findings made by the judge, and where there are no findings which can be preserved, is for the matter to be decided afresh and for the case to be remitted to the First-tier Tribunal for a *de novo* hearing before another judge aside from Judge Mack.

Notice of Decision

18. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.

19. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Mack.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 July 2024