Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03979/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 February 2016	**On 11 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

K.S.A.A.
(ANONYMITY ORDER)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S. Collins, Counsel, instructed by Sentinel Solicitors
For the Respondent: Mr P. Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Ms K.S.A.A., a citizen of Somalia, against the decision of the First-tier Tribunal dismissing her asylum and humanitarian protection appeal.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order.

Background

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3. The appellant was born on 20 September 1985. She arrived in the UK on 28 August 2006 presenting a false identity. She was convicted of possession of a false instrument with intent and was sentenced to 12 Months imprisonment. On 27 February 2007 a decision was made to deport the appellant and her appeal against that decision was dismissed on 13 September 2007 with an application for a High Court review being refused on 5 October 2007. On 19 April 2007 her asylum claim was refused. On 19 March 2008 a deportation order was made against the appellant. Representations submitted on 30 April 2008 were treated as an application to revoke the deportation order, which was refused. The appellant's appeal against that decision was dismissed on 23 June 2011. However the appellant's appeal was allowed by the Upper Tribunal on 30 November 2011 and the appellant was granted six months' discretionary leave with a further six months granted on 15 October 2012. On 3 April 2013 the appellant's representatives made an application for humanitarian protection or for a longer period of discretionary leave. On 26 February 2015 the respondent refused the appellant's application to vary her leave to remain and made a decision to remove her to Somalia.

4. Judge of the First-tier Tribunal Youngerwood heard the appellant's appeal on 29 July 2015 and in a decision promulgated on 11 September 2015, Judge Youngerwood allowed the appellant's appeal on the basis that the decision breaches the appellant's European Union rights and was therefore not in accordance with the law and also allowed the appeal under the Immigration Rules (Article 8). The appellant's appeal on asylum and humanitarian protection was dismissed.

5. Permission to appeal to the Upper Tribunal was sought by the appellant, in relation to the dismissal of the appellant's appeal on asylum and human rights grounds, on the following grounds: 1. The Judge erred in his approach to the appellant's credibility on the issue of what if any contact she has had with any person in Somalia and in requiring 'relatively compelling evidence'; 2.The Judge disbelieved the appellant's husband, a British citizen of unblemished character, because his wife had been found not to be credible; 3. The Judge erred in respect of risk to Somalia to women generally. Permission was granted to the appellant. Although the respondent also sought permission to appeal permission was not granted.

6. The hearing came before me. At the end of the hearing I reserved my decision which I now give.

<u>Grounds 1 and 2</u>

7. Mr Collins briefly summarised the appellant's proceedings to date and relied on the findings of Upper Tribunal Judge Manuel dated 17 November 2011 where he referred to the approach of the previous

panel who 'had approached its tasks conscientiously when dealing with a dishonest claimant, but their view of the real risks facing the Appellant (a lone female) returning to southern Somalia after a long absence were in the tribunal's view too optimistic when examined against the objective evidence available to them'. However Mr Collins accepted that the appellant cannot go behind the findings of the Tribunal in 2007 (and which were adopted by the Tribunal in June 2011) that the appellant was 'not credible in any of her accounts'. They found, as did the previous panel:

> '... that she has not proved that she is not in contact with her family in Somalia. She has many connections with Somalis living in the UK. If her account were true, she must have been gravely concerned as to the welfare of her mother, brother, and aunt. The aunt is said to have a daughter living abroad who sent her mother money. The aunt must therefore have had some stability in her life. The evidence that the appellant gave us as to her inability to find her family was deeply unconvincing'.

8. Mr Collins relied on the witness statement and oral evidence before Judge Youngerwood that her partner met her in March 2010 and that they had lived together since 10 September 2011, which was after the last findings of credibility in relation to the appellant in June 2011. Mr Collins submitted that the Judge had applied an incorrect standard of proof in requiring 'compelling evidence' to overturn the previous findings, given <u>Devaseelan</u>. He argued that the Judge had also erred in that <u>Devaseelan</u> could not apply to the husband's unchallenged evidence. In effect the Judge was finding that the appellant was not credible in perpetuity.

9. The respondent was not represented before the First-tier Tribunal. Judge Youngerwood noted in his decision that he heard oral evidence from both the appellant and her partner. The Judge noted that Mr Collins' submitted before him that it was the appellant's 'uncontradicted' evidence that she had not had lost contact with her family.

10. I find no merit in Mr Collins' argument before me that Judge Youngerwood's approach to the appellant's evidence was flawed: the Judge quite properly directed himself, including that he did not have to accept the appellant's evidence on the grounds that it was uncontradicted. The Judge reminded himself that the appellant had been found not to be a witness of credibility in her previous appeals and that he was required, in line with the principles in <u>Devaseelan</u> to 'take note' of the previous 'cogent adverse credibility findings made against this appellant'.

11. <u>Devaseelan v Secretary of State for the Home Department</u> [2003] Imm AR 1 was approved by the Court of Appeal in <u>Djebbar v Secretary of State for the Home Department</u> [2004] EWCA 804 and concerned a second appeal made on human rights grounds by an appellant whose

asylum appeal had previously been dismissed. Paragraphs 39 to 42 of the decision found as follows:

> "(1) The first Adjudicator's determination should always be the starting-point. It is the authoritative assessment of the Appellant's status at the time it was made. In principle issues such as whether the Appellant was properly represented, or whether he gave evidence, are irrelevant to this.
>
> (2) Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator.
>
> (3) Facts happening before the first Adjudicator's determination but having no relevance to the issues before him can always be taken into account by the second Adjudicator.
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> (4) Facts personal to the Appellant that were not brought to the attention of the first Adjudicator, although they were relevant to the issues before him, should be treated by the second Adjudicator with the greatest circumspection. An Appellant who seeks, in a later appeal, to add the available facts in an effort to obtain a more favourable outcome is properly regarded with suspicion from the point of view of credibility.. for this reason, the adduction of such facts should not usually lead to any reconsideration of the conclusions reached by the first Adjudicator.
>
> (5) Evidence of other facts – for example country guidance – may not suffer from the same concerns as to credibility, but should be treated with caution.
>
> (6) If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator, and proposes to support the claim by what is in essence the same evidence as that available to the Appellant at that time, the second Adjudicator should regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be relitigated …
>
> (7) The force of the reasoning underlying guidelines (4) and (6) is greatly reduced if there is some very good reason why the Appellant's failure to adduce relevant evidence before the first Adjudicator should not be, as it were, held against him. We think such reasons will be rare."

12. The appellant in her witness statement before Judge Youngerwood, despite those previous findings that she had not proved that she was not in contact with family in Somalia, maintained that she had had no contact with her family since she left Somalia in 2006. On the basis of the Devaseelan principles Judge Youngerwood had to treat the previous Tribunals' findings on that evidence, that it was not credible, as a starting point. The Judge noted, at paragraph [16], that Mr Collins' asked the appellant about the position since 2011. In rejecting the appellant's restated evidence that she had no contact with her family, the Judge considered all the evidence, including that the appellant as well as previously giving an untruthful account had

also previously produced two witnesses who were also found not credible.

13. The Judge had correctly directed himself, at [6] as to the standard of proof in these appeals. The Judge stated at [16] that ‘these cogent adverse credibility findings, on the core of the appellant’s claim, means, in terms, that she is simply not a person to be believed, unless she is able to produce some credible and relatively compelling evidence to establish that either the previous findings should not be followed, or that since those findings her circumstances have changed’.

14. When his findings are read in their entirety the Judge has neither elevated the standard of proof nor required corroboration. What the Judge was saying, and did quite properly find (as stated in the next sentence), was that, given the application of the Devaseelan principles, he did not now accept the ‘mere assertion’ of a previously discredited witness that she was not in contact with her family (and he considered that mere assertion in the round, in light also of her partner’s evidence). That was clearly a finding properly open to him (and it is difficult to see how he could have come to a different finding on the evidence before him).

15. In relation to the Judge’s consideration of the appellant’s partner’s evidence, the Judge was quite clear in his findings that none of the evidence before him was challenged but that did not mean he had to accept that evidence. That is different from Mr Collins’ submission that the Judge was incorrectly applying Devaseelan principles to the partner’s evidence. The Judge’s treatment of the evidence makes it clear that he considered all the evidence including the fresh evidence from the appellant and her partner, as he was bound to do, in the round. This included noting that the appellant had previously been found to have produced two witnesses who were also found not to be credible. Whilst Mr Collins noted there were no adverse credibility findings specifically in relation to her partner, the Judge clearly did not accept that his evidence in relation to the issue of the appellant’s family was sufficient, finding that he:

> “... gave no detailed evidence as to why he was in a position to confirm what the appellant was saying, apart from what she might have told him …”

16. It was open to the Judge when considering the totality of the evidence, including her partner’s supporting evidence, not to accept that the appellant had demonstrated that she was not in contact with her family in Somalia, for the reasons he gave. There was no material error in that approach.

17. In addition and in the alternative there was no challenge before the First-tier Tribunal to the previous findings that the appellant is not from a minority clan. Therefore even if I am wrong in the above in

relation to the Judge's approach to the appellant and her partner's evidence about her family connections in Somalia, any error cannot be material given the Judge's findings at [18] that she would in the alternative (to support from relatives) have support/protection as the member of a majority clan. There is no merit in the first or second grounds.

Ground 3

18. The appellant's third ground discloses no arguable error of law and is no more than a disagreement with the Judge's findings. It was argued that Judge Youngerwood erred in respect of risk in Somalia to women generally and specifically the appellant and Mr Collins in his grounds of appeal to both Tribunals and before me relied on the most recent background material as he submitted that the most recent country guidance case of MOJ & Ors (Return to Mogadishu) Somalia [2014] UKUT 00442 (IAC) did not specifically address risk to women.

19. The Judge gave detailed and careful consideration to the issue of risk on return. The Judge's findings are set out from [11] to [18] He accepted that the appellant's partner and child would not go with her and that she would be returning to Somalia on her own. He summarised Mr Collins' arguments including that there is a general risk to women and in particular to lone women in Somalia. Mr Collins' arguments before me were made before Judge Youngerwood and addressed in some detail by him. That included Mr Collins' reliance on the 2015 CIG report and the Judge gave reasons at [12] for finding that this was 'in no way inconsistent' with the information derived from 2011.

20. The appellant's home town is Afgoye and the Judge found that the evidence did not demonstrate that the situation in relation to the accessibility of travel to Afgoye from Mogadishu had deteriorated. The Judge also found at [12] that this may have been something of an academic argument given Mr Collins' submissions in relation to the general risk to women and in particular lone women.

21. However the Judge considered at [16] that the appellant had failed to demonstrate that she was 'without the necessary family, friend or clan connections on return to Somalia'. Although Mr Collins asserted that it was not a question of the appellant having family in Mogadishu as she is from Afgoye, the Judge had this in mind including considered at [17] that Mogadishu is very close to Afgoye. The Judge had also set out Mr Collins' arguments and reliance on the background country information in relation to the situation for women, particularly lone women.

22. Judge Youngerwood concluded, at [18] that he was 'not satisfied that she would not be able to have the assistance of some form of 'social support network as the member of a majority clan, or having the

protection from a majority clan, or having access to funds from relatives living in Somali'. Given all that the Judge had considered in reaching that conclusion it is clear he had in mind the evidence as to the difficulties for lone women in Somalia. His findings were properly open to him and properly reasoned. It cannot be said that they had no rational basis.

Decision:

23. The appeal is dismissed. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and shall stand.

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Dated: 8 February 2016

Deputy Upper Tribunal Judge Hutchinson