

## ASYLUM AND IMMIGRATION TRIBUNAL

### THE IMMIGRATION ACTS

Heard at: Field House

Date of Hearing: 20 November 2008

Before:

**Miss E Arfon-Jones DL, Deputy President of the Asylum and Immigration Tribunal**

Between

**FS**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

#### Representation

For the Appellant: Ms N Brissett, Counsel, instructed by Aden & Co, Solicitors

For the Respondent: Ms F Saunders, Home Office Presenting Officer

*Immigration Judges have a duty to consider all the evidence before them when reaching a decision in an even handed and impartial manner. In assessing the evidence before them they must attach such weight as they consider appropriate to that evidence. It may on occasions be appropriate to reject the conclusions reached by an expert. What is crucial is that a reasoned explanation is given for so doing.*

### DETERMINATION AND REASONS

1. The appellant, born on 12 December 1975, is a citizen of Somalia. She appealed against the respondent's decision of 30 May 2008 which refused her application for leave to remain in the United Kingdom and gave directions for her removal from the United Kingdom. The appellant's claim for asylum was refused and furthermore the respondent did not consider that the appellant qualified for humanitarian protection. The respondent further concluded that her removal from the United Kingdom would not breach her Article 8 rights under the European Convention on Human Rights (ECHR) and also addressed the issues under paragraph 395C of the Immigration Rules.

2. The appeal was heard by Immigration Judge Gerrey on 27 August 2008. He allowed the appeal on both asylum grounds and on human rights grounds (Article 3). In light of that decision, the appellant was not eligible for a grant of humanitarian protection.
3. The respondent applied for reconsideration of the decision and in an order dated 24 September 2008 Senior Immigration Judge Chalkley ordered reconsideration.
4. Thus the matter came before me on 20 November 2008 when Ms Brissett represented the appellant and Ms Saunders the respondent.
5. The appellant claimed to have left Somalia on 12 December 2007, travelling to Kenya by lorry where she claims to have arrived on 15 December 2007. She departed by air from Kenya arriving in the United Kingdom on 2 January 2008. She claimed asylum on 3 January 2008.
6. The appellant claims to have been born in Afgoye, and to be a member of the Ashraf clan, Hassan sub-clan, and Ashraf Sarmaan sub-sub-clan. Her claim is that her family suffered after the outbreak of civil war in 1991 particularly at the hands of the Hawiye majority clan, claiming that her parents and brother were killed by the militia. It was following the death of her mother in 2007 that she and her husband escaped to Kenya, fearing for their lives.
7. The essence of the appeal is that the respondent, having found the appellant's claim to be rehearsed and fabricated on the basis of linguistic analysis, rejected the appellant's claim to be at risk of persecution if returned now to Somalia. The substance of her claim was not addressed in detail nor was any background evidence considered as two expert reports were relied upon by the respondent in dismissing her claim to be from Afgoye and a member of the Ashraf clan.
8. Before the Immigration Judge were two expert reports. The first was prepared by Sprakab, a privately owned company located in Sweden which conducts linguistic analyses. They prepared a report which cast doubt on the appellant's claim to originate from Afgoye.
9. Acknowledging that the appellant displayed a familiarity with the city of Afgoye the report nevertheless opined that "... her knowledge sounds rehearsed ...". There was a later reference in the report to the appellant's evidence as "... could be rehearsed ...". Examples of pronunciation of words and phrases as well as sentence construction were provided which Sprakab claimed disclosed a linguistic background with northern Somalia rather than the Afgoye area as claimed by the appellant.

10. Although the appellant enumerated several key buildings in Afgoye and identified the clans located in Afgoye, the report noted that she could not specify geographical locations. The appellant claimed to suffer from a headache which she claimed explained her failure to recall anything further during the interview.
11. Sprakab's final conclusion was that the appellant spoke a variety of Somali "with certainty in: northern Somalia" despite her familiarity with the Afgoye.
12. The conversation between Sprakab and the appellant lasted about 35 minutes and was conducted over the telephone. The appellant claims that the conversation was interrupted by background noise and that she had difficulty in understanding the interviewer who did not speak with a southern dialect of Somali.
13. The second expert report was one prepared by Mr Haroon Abdi, a National Registered Public Service Interpreter in Somali and also a qualified examiner of the Institute of Linguistic Examiners. He had been instructed by the appellant's solicitors to undertake an assessment of the appellant with a view to giving a professional opinion as to whether or not she spoke Somali in the Af-Reer Hamar dialect. The assessment took place in a conference room at the solicitor's office and the venue was described as "... sufficiently comfortable, quiet and spacious ...". Following a relaxed and informal conversation, the questions covering relevant topics for about an hour, Mr Abdi set out his conclusion at paragraph 13 of the report thus: "... it is my opinion that she is not a natural Af-Reer Hamar speaking Somali".
14. Mr Abdi's conclusion was based on the fluency and consistency with which the appellant engaged in conversation. Albeit she could pronounce some "key words at times with some degree of fluency in Af-Reer Hamar in her intonation", Mr Abdi nevertheless formed the view that her sentences did not flow naturally in Af-Reer Hamar. Many of the sentences and pronunciation of words did not resemble the Somali "commonly" spoken by Reer Hamar speaking people from southern central Somalia where Afgoye is located.
15. Mr Abdi did not "instantly associate" the appellant's accent and speech as emanating from someone of the Af-Reer Hamar speaking clan. He stated "She did at times manage to rather surprisingly pronounce some words in the way they are expected to sound in Af-Reer Hamar ..." and he gave specific examples. He considered that the appellant's Somali was interspersed with northern intonation and concluded "... I am therefore of the view that it is not likely that she emanates from the Afgoye region which she claims." The variations in her accent and the phonetics of the spoken sentences and words cast doubt on the appellant's claim in his view.
16. The Immigration Judge engaged with the comments in both expert reports and made clear findings of credibility with regard to the appellant's evidence and that of her witness, Deqo Ahmed Sharif.

17. At paragraph 7 of his determination the Immigration Judge identified the essential issue of the appeal namely the appellant's clan membership and area of origin. The respondent had found the appellant's claim to be rehearsed and fabricated on the basis of the linguistic analysis and had not gone on to consider the substance of her claim and had not considered in any way the background evidence.
18. At paragraph 19 of his determination the Immigration Judge noted that the appellant's evidence was consistent with the background evidence finding, "... events described by the Appellant to be totally plausible and credible ...". The Immigration Judge addressed the comment as to the appellant's evidence sounding rehearsed in paragraph 20 of his determination. He noted that no credentials had been given for the expert's assessment of the appellant's demeanour and the Immigration Judge concluded that his own assessment as to the appellant's credibility was also to be put into the analysis of the appellant's claim.
19. "The author of the Respondent's analysis says in two places in the analysis report that the Appellant "speaks a variety of Somali with certainty found in northern Somalia"". The Immigration Judge, in quoting that conclusion at paragraph 21 of this determination went on to note that the expert had not stated that that particular variety of Somali was not found anywhere else in Somalia nor did he suggest that there was no one in southern Somalia who would speak that variety, bearing in mind what he believed to be a valid point made by the appellant in paragraph 6 of her witness statement namely that there had been a mass movement of internally displaced persons within Somalia since the outbreak of civil war in 1991. He further noted that the author of that analysis did not appear to indicate anywhere that some at least of the appellant's spoken Somali was of the southern Reer Hamar dialect. In the light of what the Immigration Judge found to be serious omissions from the respondent's analysis, he went on to state "I do not find it to be an impressive piece of evidence".
20. At paragraph 22 of the determination the Immigration Judge engaged with the expert report prepared pursuant to instructions given by the appellant's solicitors. He noted that the interview had lasted for 55 minutes. He also noted that nowhere in that report was there a comment about the appellant's knowledge relating to the city of Afgoye.
21. At paragraph 23 of the determination the Immigration Judge referred to paragraph 14 of Mr Abdi's report in which he stated that the appellant's accent and speech were consistent with someone who he did not "instantly associate as emanating from an Af-Reer Hamar speaking clan". He engaged with other findings made by Mr Abdi in his report.
22. The Immigration Judge's conclusion at paragraph 24 of this determination that "On the basis of Mr. Abdi's assessment, I find that he concluded that the Appellant was not speaking solely in a northern accent, but was speaking in a form of Somali

which was “interspersed with northern intonation””. The judge also noted “variations in her accent” and that her spoken Somali did not resemble that “commonly spoken by the Reer Hamar speaking people”. He went on further to find “... again, he [Mr Abdi] does not appear to suggest that no person who had lived in the south of Somalia would speak as the Appellant did”.

23. Notwithstanding the expert’s evidence, the Immigration Judge analysed the appellant’s evidence at paragraph 25 of the determination and also commented on the evidence of her witness, Deqo Ahmed Sharif. The Immigration Judge found the witness to be independent and indeed credible. Internal and external consistency of evidence were factors taken into account by the Immigration Judge in the appellant’s favour.
24. The Immigration Judge also noted at paragraph 26 of his determination that the appellant’s evidence was given without hesitation and prevarication.
25. On that behalf he allowed the asylum appeal, having believed the appellant’s evidence that she belonged to the Ashraf clan and the sub-sub-clan as claimed, had been born and lived in Afgoye and had suffered persecution at the hands of the Hawiye.

### **Submissions**

26. Ms Saunders, acknowledging that ethnicity and clan membership were crucial, urged me to find that failure by the Immigration Judge to direct himself to two separate expert reports led to a perverse outcome. Both reports had stated that the appellant’s dialect indicated a northern origin, inconsistent with her claim. The Immigration Judge focussed instead on the appellant and her witness. Ms Saunders submitted that the Immigration Judge had overlooked the credentials of two experts and instead had “preferred” the appellant’s evidence, corroborated by her witness. This in Ms Saunders’ submission was inadequate.
27. Notwithstanding that the Immigration Judge was the finder of fact, when there was powerful evidence from experts, it was insufficient for him to reject the evidence of experts on the basis that he preferred the appellant’s evidence. There was no cogent reasoning by the Immigration Judge for his rejection of the expert evidence and his failure to analyse fully those expert reports led to an unsafe outcome.
28. Ms Brissett urged me to uphold the Immigration Judge’s determination. She invited me to find that his reasoning was not perverse or flawed as he had indeed engaged with the expert reports. She prayed in aid paragraph 19 and paragraph 20 of the determination.
29. She submitted that the Immigration Judge had given a detailed assessment of the reports but had preferred his own assessment of the appellant’s credibility.

30. His recording at paragraph 21 of his determination the failure on the expert's behalf to establish credentials when assessing the appellant's demeanour and concluding that her conversation indicated a rehearsal of facts, was entirely valid and sustainable.
31. It was to be noted that neither expert had excluded the possibility that the appellant's dialect could be found elsewhere in Somalia. Neither report was therefore definitive or conclusive. Such phrases as "commonly", "typically" were not conclusive.
32. On the basis that the Immigration Judge had engaged with both reports in some detail and given cogent reasons for his rejection of the reports, his determination should not be regarded as irrational or perverse.
33. Ms Saunders reiterated that the failure by the Immigration Judge to grapple meaningfully with the expert's report indicated a fatally flawed determination. She did, however, acknowledge that there was a gap in the reports and that neither were conclusive as to whether it was possible for someone to speak as the appellant did and nevertheless come from Afgoye. She nevertheless submitted that the methodology was sound and that the reports were balanced. Particularly the report prepared for the appellant's solicitors had been conducted over a period of an hour with no noise interference.
34. Ms Saunders urged me to find that the Immigration Judge's failure to grapple with the key findings from the professional experts had led to an unsafe outcome.

### **Findings**

35. It is incumbent upon an Immigration Judge to consider the evidence as a whole and not in a piecemeal fashion. It must be remembered that it is unlikely that an expert will be able to address the actual events concerning an appellant himself or herself and that the account given by an appellant is to be considered in the light of all the circumstances, including material from the experts' reports.
36. I find that in this particular appeal the Immigration Judge made clear findings of fact, giving cogent reasons for those findings. They were findings that were open to him on the evidence before him. A fact-finding Tribunal may give weight to an expert report favourable to an appellant and yet disbelieve an appellant's account. The converse must also be possible. Whilst no judicial fact-finder can reject an expert report in a peremptory and dismissive manner, where cogent reasons exist for such rejection, they must be considered in the light of all the evidence.
37. I find that in this particular appeal the Immigration Judge gave an explanation for preferring the appellant's evidence over the expert reports which he subjected to close analysis. Neither report excluded the possibility that the appellant might be from the Ashraf clan born and bred in Afgoye, albeit in their expert opinion both

experts inclined to the view which cast doubt on the appellant's claim to have been brought up in Afgoye as a member of Ashraf clan. By not excluding such a possibility, the reports were not absolutely conclusive and definitive. Neither report addressed the issue of whether the appellant's northern intonation might have been a consequence of population displacement.

38. It is for an Immigration Judge to make credibility findings based on the totality of the evidence and in some circumstances will reject an expert's evidence. What is crucial is that a reasoned explanation is given for so doing.
39. The expert evidence in this appeal was crucial. The Immigration Judge gave it the weight he regarded appropriate, giving reasons for his conclusions. His consideration of all the evidence was proper and in no way perverse.

### **Decision**

40. Having been satisfied that the determination discloses no material error of law, the original decision stands. The appeal is allowed on asylum grounds. The appeal on human rights grounds is also allowed and accordingly the appellant is not in need of humanitarian protection.

E ARFON-JONES DL  
DEPUTY PRESIDENT