Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/11308/2012

THE IMMIGRATION ACTS

Heard at Newport	**Determination Sent**
On 24 July 2013	**On 12 September 2013**

Before

Mr C M G Ockelton, Vice President
Upper Tribunal Judge Grubb

Between

SMM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Reynold, instructed by South West Law
For the Respondent: Ms E Martin, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant was born in Somalia and most recently lived in Yemen. She travelled from Yemen to France, where she remained for some time, and from France to United Kingdom. Soon after arrival here she claimed asylum.

2. She said that she was of Somali nationality (only) and that she had a fear of persecution in Somalia as a member of the Reer Hamar clan; she said she would also have difficulties if returned to Yemen because of familial abuse. The Secretary of State did not accept that she was from the Reer Hamar clan, but did accept that she

could not be returned to Somalia without a breach of Article 3. But the Secretary of State concluded that the appellant qualified for Yemeni nationality, and that even if she did not have it she had the right to apply for it. Her account of her circumstances in Yemen was not accepted, and she could be returned there.

3. The appellant appealed to the First-tier Tribunal against the Secretary of State's refusal of her claim. The appeal came before Judge Davidge. She heard oral evidence from the appellant, who was represented by counsel. The judge did not regard the appellant as credible in her account of her history and circumstances: the judge's conclusion was "I reject the appellant's account in its entirety". The judge also declared herself satisfied to the balance of probabilities that the appellant is a national of Yemen. As the appellant had not established that she was at any real risk of persecution or ill-treatment from anyone if returned to Yemen, her appeal was dismissed.

4. The grounds of appeal to this Tribunal were that, in the light of the material before her in relation to Yemeni nationality law, it was not open to the judge to find that the appellant was a national of Yemen; and that her conclusions on credibility were also not rationally open to her: in particular, she was not entitled to find that the appellant's motive in marrying was to resolve her immigration status.

5. So far as concerns the issue of the appellant's nationality, there is a risk of misunderstanding the task that the judge performed. She did not attempt to constitute herself an expert on Yemeni nationality law, nor did she attempt to discover whether at any particular time the appellant met the requirements of Yemeni nationality law. It is difficult in any event to see how she could have done so, bearing in mind that that would have required her to accept the appellant's word about what documents she had or did not have at the relevant time, and it is clear that the judge was not prepared to accept the appellant's word. Thus, the judge did not attempt to decide for herself what would have been the result of an application for nationality by the appellant. What she did was to decide that, whatever those requirements were, the appellant would have met them. This is what she said:

> "25. I noted that this point was not set out in the grounds of appeal and was made for the first time in the skeleton argument. The only discussion arose on the basis of her entitlement through marriage, however as the extract of relevant law shows it is not the only method of acquiring nationality. The Appellant had an aunt who was a long term resident of Yemen and her nationality is not described, nor is there any evidence before me as to the position in respect of the appellant's grandparents. Historically many Yemenis moved from the Yemen to Somalia and settled, marrying Somali citizens. Many have returned to the Yemen when life became difficult in Somalia. The border is notoriously porous in both directions. It is of course for an Appellant and her legal representatives to decide what evidence to call to support a claim, it is not for the fact finding judge to embark on a far ranging enquiry, but where, as here, it is made for the first time at a hearing, and the evidence is scant, the burden is not reduced, and is not satisfied by submitting partial evidence.

26. I do not accept that the Appellant is not a Yemeni because she could not have qualified to be one on the basis of her marriage because of the various obstacles to obtaining citizenship by that route. On the contrary on the factual chronology she would have been entitled to citizenship, albeit that various administrative hoops would have to have been negotiated. I do not believe her when she says she never went through those hoops because it is clear from her account that she married with the intention of resolving her immigration status, i.e. for her husband's passport. She said she married to get protection because of the difficulties with being an illegal Somali woman in Yemen. She did not love her husband but saw him as an opportunity to obtain a benefit. In that context I find it very likely that she would have made sure that the relevant paper work was in place before and after marriage to obtain citizenship. Her evidence that she then did not pursue the matter is contrary. The Appellant has indicated that her husband wanted to marry her. He is a Yemeni. There is a route for the foreign wives of Yemeni citizens to obtain citizenship. The Appellant has borne him a son and been a dutiful wife. On the evidence put forward I find it very likely that he would have taken action to remedy any irregularity in her position, particularly as she bore him a son. The submission that there is no evidence of permission having been obtained does not answer the point.

27. Nor did I find her evidence that the religious ceremony undertaken by a sheikh in the home meant that somehow theirs was not a properly constituted marriage, but suffered from some irregularity so as to make it an informal marriage that would not be recognised. Sharia law was observed. The requirements of the state in terms of an application for nationality based on a four year marriage had nothing to do with the conduct of the marriage in the home or its validity".

6. It seems to us that those conclusions could be attacked only by showing either that, on the evidence that the judge accepted, the appellant, despite her wishes, could not have become a national of Yemen; or that the judge's conclusions about the appellant's intentions, and therefore about what she in all probability did, were not open to the judge. The former line of argument is obviously hopeless in the present case. There is no expert evidence on the circumstances in which a person married to a Yemeni national cannot obtain Yemeni nationality, and the judge did not accept the appellant's evidence as credible. We turn therefore to whether the judge was entitled to make the assessment she did about the appellant's credibility. The relevant paragraphs of the determination are as follows:

"29. The Appellant's credibility is weakened by her failure to claim asylum until arriving in the UK, despite ample opportunity to do so. Her explanation that she did not do so because it did not occur to her is undermined by the fact that previously she has said it was because she preferred to come here rather than claim in France because she did not speak French and preferred to learn English. I find that she has no adequate explanation for failing to claim in France and that this undermines her credibility.

30. I considered the issue of why the Appellant left Yemen in the first place. In addition to the matters mentioned above there were a number of places where the Appellant's claim lacked the ring of truth.

(i) The Appellant was clear in her evidence that she did not come to the UK intending to obtain asylum and then bring her husband and child. She said that that made no sense because she had no connection with her husband. He had divorced her. That is to ignore the fact that even on her own account she was still married and very much connected with her husband when she left the Yemen and arrived here. She came with his blessing.

(ii) The Appellant talks of not being allowed out by her parents in law. Yet when she is asked how she managed to get back in contact with her previous employers she says that she did so because she was still in contact with the woman to whom she had given her job as their domestic, and had used that contact to re-establish her relationship with them.

(iii) Her account that her in-laws were such wicked people that they hid her aunt's death from her is also inconsistent with her statement that they did it to prevent her from bearing too much sorrow because she had already lost her parents. However her claimed lack of knowledge does not ring true because in any event her husband could have told her.

(iv) The Appellant said that she had left good employment to get married so as to secure her status in the Yemen because her employers were emigrating to America, yet years later they were still there, and still felt so attached to her that they facilitated her obtaining a false passport.

(v) I also note that her claim that her in-laws refused to take her with them when they moved because of the danger locally, is inconsistent with her evidence that culturally, as the wife of their son, she was entitled to her place within the family home, so that in refusing her they in effect threw her out. It is also in stark contrast to her account that, up to that point, they had found her so useful that they exploited her to their advantage. No explanation for the change in attitude is given. That they "threw" her out can only be consistent with the end of the marriage. Her evidence to me was that the marriage remained very much alive, with her husband remaining in close contact with her, and supported her decision to come to the UK, even seeing her along with their son, on the day she left, and that the couple remained in contact after she arrived here.

31. The Appellant has not provided a full and detailed statement in support of her claim. She makes significant omissions from her statement not just about the fact of the divorce, but also failing to mention that her in-laws had in fact returned to the home where she had been living, and there is nothing about the detailed history of the family and her aunt. On her own account the Appellant suffered a tragedy when her parents died in Somalia. The family background and history is not set out.

32. An aunt travelled from Yemen to come and get her. She benefited from living with this aunt, who apparently set a good example of a woman managing to live alone in the Yemen, as the Appellant does not admit to other family members there. The Appellant went to the Yemen when she was only nine, and so plainly there was adequate support for her for a number of years before she went to work herself. The Appellant rose to the challenge of finding work. She was outgoing and independent, travelling, with no mention of a chaperone, between her work and her Aunt's. She formed a friendship with a man, in the context of work. She introduced

him to her Aunt herself. She chose to marry him. Her account reveals that it was she who wanted to come to the UK, and that she discussed it with him, that she said to him that with his parents living away it was her chance, and she persuaded him, and he gave the plan his blessing.

33. I find that the Appellant's portrayal of herself as being a down trodden exploited victim subjected to domestic abuse does not bear scrutiny. I am satisfied that she came here because she thought she would have a better life and she has shown a marked resourcefulness.

34. Her account of the actual divorce is that her husband explained to her that he has managed to obtain work in Saudi. As she is here, and living so far from him, and been away for so long he thought he should take another wife. Islamic law does of course allow him to do so without divorcing her first, but the real point is that the tenor of the evidence is of explanation and of seeking permission, not of divorce. The only evidence of divorce is the Appellant's bare assertion. In the context of her general lack of credibility I find that I can give it no credence. I am satisfied that she remains married and can expect the continuing support of her husband and in-laws on return to the Yemen and that her claim to be at risk from them is not established even to the lower standard".

7. Not a word of that passage is challenged in the grounds of appeal. It follows that the appellant and her representatives accept that she simply was not telling the truth, and that her portrayal of herself was a fiction. That is not a sound basis for attacking what the judge said in other parts of the determination. The grounds assert that the appellant's own evidence was not sufficient to allow the judge to reach the conclusions that she did, because she said that she married her husband only for protection, that his family were against it, that he did not really protect her, and that lone women in Yemen were at risk. It seems to us that to require the judge to rely on this part of the evidence of an appellant whose general credibility was low and who had been misrepresenting herself as "down trodden [and] exploited" is unrealistic. The judge was faced with an appellant who was lying to her. She was entitled to reach what conclusions appeared to her to be appropriate about what the position actually was. Her conclusion that the appellant had by some means obtained Yemeni nationality is, in the context of this appeal, unassailable.

8. The consequence is that because she has not shown that she is at risk in both of the countries of which she has been found to be a national, her claim is not made out, and this appeal must be dismissed.

9. We note, however, that the question of her Yemeni nationality has not been subject to the acid test of whether she is accepted by the Yemeni authorities. If she cannot be returned to Yemen, it would appear that she cannot be removed from the United Kingdom without a breach of Article 3, on the Secretary of State's own position as to the consequences of her removal to Somalia. If (despite the judge's findings) there is good reason to suppose that she is not a national of Yemen, it may be that her case will have to be looked at again, in the light of the judge's conclusions about her general credibility, which, as we have noted, were not challenged before us. So far as

concerns this appeal, however, there is no proper ground for saying that the judge erred in law, or, therefore, for setting aside her determination.

10. For the foregoing reasons the appeal to this Tribunal is dismissed.

C M G OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 16 August 2013