



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/01662/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4th December 2015**

**Decision & Reasons Promulgated
On 8th January 2016**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS M S A
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

For the Respondent: Ms S Javid, Thompson & Co Solicitors

ERROR OF LAW DECISION

1. This is the Respondent's application against First-tier Tribunal Judge Maxwell's determination promulgated on 18th March 2015 by which he allowed the Appellant's appeal under paragraph 276ADE of the Immigration Rules. The Secretary of State's grounds argue that the Judge was not entitled to go behind the findings of the previous Judge in an earlier appeal who had found that the Appellant was not Somali but a national of Djibouti. The Judge did go behind that finding and indicated that he did not consider himself bound by the previous Tribunal's Decision.

That is an error of law and not in accordance with the guidance of Devaseelan [2003] Imm AR 1.

2. He also criticised the Secretary of State for proceeding on the basis, he said, without evidence or explanation, that the Appellant was a Djibouti national. However, it is quite clear that the reason the Secretary of State did so was because that had been the finding of the previous Judge. The Judge then overturned the finding of the previous Tribunal, finding that the Appellant is a national of Somalia. He then considered paragraph 276ADE on the basis that she is a national of Somalia when he ought to have considered it on the basis of her as a national of Djibouti.
3. The Decision contains numerous errors but that is the main one. Also the judge purported to quash the removal directions to Djibouti which is something that he had no power to do. Having consulted both representatives before me it was accepted that the Decision is tainted by errors of law which go to the heart of the appeal and that it should be set aside in its entirety and remitted to the First-tier Tribunal to be heard *de novo* and that is what I do.

Notice of Decision

On that basis the appeal to the Upper Tribunal is allowed to the limited extent that it is set aside and remitted for a fresh hearing.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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

Date 7th January 2016

Upper Tribunal Judge Martin