



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/01121/2013

**THE IMMIGRATION ACTS**

Heard at Columbus House, Newport  
On 5 September 2013

Determination Sent  
On 24 September 2013

Before

UPPER TRIBUNAL JUDGE GRUBB  
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

A S M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr G Hodgetts instructed by South West Law  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited us to rescind the order and we continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. The appellant is a citizen of Somalia who was born on 14 April 1941. He is, therefore, now 72 years old. He arrived in the United Kingdom on 11 September 2012 and claimed asylum. On 11 October 2012, the Secretary of State refused his application for asylum and humanitarian protection under the Immigration Rules (HC 395 as amended). Thereafter, on 25 January 2013, the Secretary of State refused to grant the appellant leave to enter and proposed to remove him by way of directions to Somalia. The appellant appealed to the First-tier Tribunal.

### **The First-tier Tribunal's Decision**

3. Following a hearing on 8 March 2013, Judge Hart TD dismissed the appellant's appeal on asylum and humanitarian protection grounds.
4. Judge Hart accepted that the appellant was a member of the majority Abgal clan and came from a village called "Warmaxan" which was around midway along (or near) the road between Wanlaweyn and Afgoye. The village was approximately 60 miles from Mogadishu. The Judge, however, rejected the appellant's account that he had been attacked and ill treated by Al-Shabab on three occasions in the year prior to his leaving Somalia and that, on two of those occasions, he had been detained for four days (on the first occasion) and for three days (on the second occasion) when they took his money and claimed to have taken his farm to keep or sell. Further, the Judge found that in any event Al-Shabab had "most likely ... abandoned possession of his home village". As a consequence, the Judge was not satisfied that the appellant was at risk from Al-Shabab if he returned to his home village.
5. The Judge went on to find, contrary to country guidance, that the appellant could, in any event, internally relocate to Mogadishu on the basis that he would not be at risk there, in particular from indiscriminate violence falling within Art 15(c) of the Qualification Directive (Directive 2004/83/EC) and that it would be reasonable to expect him to live there, given, in particular that he was a clan leader of the majority Abgal clan.

### **Error of Law**

6. On 4 April 2013, the First-tier Tribunal (Judge R C Campbell) granted the appellant permission to appeal to the Upper Tribunal. The grounds argued that Judge Hart had erred in law in departing from the relevant country guidance case of AMM and Others (Conflicts; Humanitarian Crisis; Returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC), in particular in finding that the Al-Shabab were no longer in control of his home village of Warmaxan and consequently that the appellant was not at risk in his home area, and further, in finding that the appellant could safely relocate to Mogadishu where he would not be exposed to a risk of indiscriminate violence contrary to Art 15(c) of the Qualification Directive (Directive 2004/83/EC). A challenge was also made to the Judge's adverse credibility finding.
7. In a decision dated 3 June 2012 the Upper Tribunal (UTJ Grubb and DUTJ J F W Phillips) set aside the decision of Judge Hart. Whilst we upheld the Judge's adverse credibility finding, we concluded that the Judge's finding that Al-Shabab were no

longer in control of the appellant's home area (it having been accepted that they were in control until late 2011) was not supported by the background evidence before the Judge. Further, we concluded that the Judge was not entitled, on the evidence before him, to depart from the country guidance decision of AMM and to find that the appellant could safely relocate to live in Mogadishu. We also concluded that the appellant had no basis for a claim under Art 8 of the ECHR.

### **Re-Making the Decision**

8. The appeal was relisted before us on 5 September 2013 in order to remake the decision in respect of the appellant's asylum and humanitarian protection claims.

#### *1. The Issues*

9. At the outset of that hearing, Mr Richards, who represented the respondent, indicated that he would invite us to depart from the country guidance case of AMM on the basis of the background material before us. However, after a short adjournment Mr Richards indicated that that was not, in fact, the Secretary of State's position in this appeal. He accepted that on the basis of AMM the appellant could not internally relocate so as to live in Mogadishu given his particular circumstances including his age and (as it was now accepted) that the appellant had not previously lived in Mogadishu despite the fact that one of his former wives had lived there whom he had visited from time to time.
10. The issues between the parties, therefore, can be summarised as follows.
11. First, it is accepted that the appellant's home area is Warmaxan, a village located on or near the main road from Mogadishu, passing through Afgoye and subsequently leading to the inland town of Wanlaweyn. From there, the road then goes on to Baidoa. Mr Richards did not challenge the appellant's evidence that before leaving Somalia he had a farm at Warmaxan which was about one hour from the road and that his house was about 30 minutes from the road.
12. Mr Richards accepted that the appellant would be at risk from Al-Shabab in his home area if they continued to control that area. However, his primary submission was on the background evidence that had not been established and therefore the appellant's asylum claim must fail. Mr Hodgetts' submission was to the contrary.
13. Secondly, it was accepted by Mr Richards that the appellant could not internally relocate to Mogadishu because of the risk of indiscriminate violence falling within Art 15(c) of the Qualification Directive. That concession was limited to the appellant having to live in Mogadishu rather than merely pass through it.
14. Thirdly, therefore, Mr Richards did not accept that the appellant could succeed under Art 15(c) of the Qualification Directive if he was not at risk in his home area because, he submitted, on the basis of AMM the appellant would be able to safely arrive in Mogadishu, and having made travel arrangements, return to his home area safely. Mr Hodgetts submitted that AMM was not so limited and the appellant could

establish an Art 15(c) risk even if he was only temporarily in Mogadishu. He also submitted that, given the appellant's circumstances including his age and lack of connection with Mogadishu, it would in any event be unduly harsh or unreasonable to expect him to live in Mogadishu.

## 2. The Law

15. The burden of proof is upon the appellant to establish that there is a real risk of persecution for a Convention reason or that he would be exposed to serious harm falling within Art 15(c) of the Qualification Directive.
16. In relation to internal relocation, the appellant must establish either that there is a real risk of persecution or serious harm to him in Mogadishu or that it would be unduly harsh or unreasonable in all the circumstances for him to relocate (i.e. live) there.

## 3. Discussion and Findings

17. The appellant briefly gave oral evidence before us in which he adopted his statements of 16 July 2013 and 26 June 2013. The appellant's daughter also gave evidence and adopted her statement dated 16 July 2013. She was not subject to cross-examination. In no material respect was the appellant's evidence undermined in cross-examination and, despite Judge Hart's adverse credibility finding in relation to the appellant's account of events that led him to leave Somalia, we have no reason to doubt the evidence he gave before us (orally and in his written statements) concerning his family circumstances and that he had never lived in Mogadishu but lived in Warmaxan.
18. We now turn to the first issue, namely whether the appellant has established that Al-Shabab remains in control of his home area, Warmaxan. It was accepted before Judge Hart and before us that Al-Shabab controlled the appellant's area until late 2011.
19. Mr Hodgetts (on behalf of the appellant) and Mr Richards referred us to a number of background documents and an expert report prepared on behalf of the appellant. In particular, we were referred to the UKBA, *Country of Origin Information (COI) Report for Somalia* (5 August 2013) at para 1.34. A Joint Report for the Danish Immigration Services and the Norwegian Landinfo's Fact-Finding Mission to Nairobi, Kenya and Mogadishu, Somalia entitled "Security and Protection in Mogadishu and South-Central Somalia" dated May 2013; the Home Office *Operational Guidance Note for Somalia* (September 2013). In addition, we were referred to an expert report by Dr Markus Hoehne, a Somalia expert at the Max Planck Institute for Social Anthropology in Germany dated 16 May 2013.
20. As we have said, it was accepted before Judge Hart and before us that Al-Shabab was in control of the appellant's home area, Warmaxan, until late 2011. As we pointed out in our earlier decision, the background evidence before Judge Hart indicated that Al-Shabab had lost control of key towns in Somalia (see paras 22-24 of our decision

dated 3 June 2013). At para 23 we referred to an earlier Danish Immigration Service Report dated 4 January 2013 which stated that Al-Shabab had: "left most of the major cities but the movement is capable of infiltrating many cities." That report then continued, however: "The situation for civilians in the rural areas dominated by Al-Shabab in S/Somalia is somewhat different."

21. The evidence in front of Judge Hart, contained in a BBC News report, stated that in October 2012 the Al-Shabab had lost control of the inland town of Wanlaweyn. That is the town at one end of the road beginning at Afgoye where the appellant's village is about halfway along. The Danish Service Report noted (at para 3.1.2) that Al-Shabab had withdrawn from the cities but continued:

"Instead Al-Shabab will be a major source of threat and insecurity along the major roads connecting the major cities in S/C Somalia".

22. The evidence to which we were referred at this hearing supports the move of Al-Shabab's control from the cities to mainly rural areas. Mr Richards referred us to para 1.34 of the *COI Report* which, citing the Danish-Norwegian Fact-Finding Mission Report of May 2013 states that:

"Concerning the presence of al-Shabaab in Lower Shabelle Peter Klansoe [Danish Refugee Council] DRC, explained that al-Shabaab controls approximately 50% of the rural areas in the southern part of Lower Shabelle. The cities and the main roads in this area are however controlled by AMISOM and the SNAF. Al-Shabaab's control in Lower Shabelle is based on fear and suppression, and the fact that no one is fighting against it."

23. What is important to notice is, however, even where control of the roads is no longer in the hands of Al-Shabab, the background evidence demonstrates that those travelling on the roads are nevertheless at risk. The Danish Report at para 3.1.2 (page 41) notes that:

"Kilian Kleinschmidt, OCHA, explained that in areas of S/C Somalia influenced by al-Shabaab people travelling along the roads are at risk of extortion by al-Shabaab as it lacks sources of income after having lost Kismayo."

24. The report further notes at para 3.2 (page 41) that:

"An international organization explained that al-Shabaab does not control any part of the cities in S/C Somalia which the government and/or AMISOM have liberated from al-Shabaab. However, control is relative term in the sense that al-Shabaab is still capable to undertake hit and run attacks. The government and AMISOM have put up a number of checkpoints, and they arrest suspects in relation to security issues and they try to gain control over main roads connecting the cities."

25. Mr Richards referred us to the more recent Danish-Norwegian Report of April 2013 which deals with the reach of Al-Shabab to those travelling along roads even where Al-Shabab are not in control of those roads:

"Regarding overland travels in S/C Somalia representatives of an international agency, Mogadishu, explained that ordinary civilians, i.e. people not working for the SNG, are travelling between Mogadishu and Kismayo, Baidoa, Jowhar and Afgoye. They mostly go by bus and there are now fewer checkpoints along the Mogadishu - Kismayo road.

There are no checkpoints between Mogadishu and Baidoa. However, there is no guarantee against al-Shabaab ambushes along the road. On the other hand, ambushes may also be committed by ordinary criminals. The representatives of an international agency, Mogadishu, confirmed that al-Shabaab will kill anyone it suspects is working for the SNG or the international community. It was added that the road between Mogadishu and Kismayo is not safe all the way. However, ordinary people will travel along this road anyhow as long as they know how to get by."

26. The dangers of travelling are identified in that report by a representative of an NGO who states that:

"She would never travel along the roads leading to Baidoa and to Kismayo from Mogadishu. This is due to the threat of al-Shabaab."

27. Specifically, dealing with the road between Mogadishu and Baidoa along which the appellant's village is located, the Danish Report says this at para 6.2.2 (page 50):

"Regarding the Mogadishu - Afgoye - Baidoa - Luuq corridor UNDSS, Mogadishu, explained that al-Shabaab has no permanent physical presence along the road. However one cannot say that it is 100% safe.

An international NGO (B), Mogadishu explained that al-Shabaab operates along the road from Mogadishu to Baidoa, but it has no checkpoints along the road. However, there is reason to believe that it will be informed about government people who travel on the road. What it normally does, is that they stop cars and check the people who are on board. Then it will take out the ones it thinks are working for the government or it for some reason regards as enemies. Ordinary people with no issue with al-Shabaab go on with no problems, and normally it will not ask for money or take valuables. Such ambushes and checks happen more or less every day on the road from Mogadishu to Baidoa. This is why the international NGO (B) will not go by road to Baidoa and therefore goes by plane. If SNAF forces, AMISOM or SNG officials are going by road to Baidoa, they have to go in a convoy."

28. That final passage emphasises the danger from the Al-Shabab perceived by NGOs of travel along this road.

29. The Home Office's own Operational Guidance Note (September 2013) quotes at para 3.6.14 the Amnesty International Report for May 2013 as follows:

"Amnesty International reported in May 2013 that the risk of human rights violations and abuses remains real in most areas of south and central Somalia, given limited government control, the significant continued presence of al-Shabab, and the ongoing armed conflict. Regardless of the recent gains of the government, al-Shabab remains in control of large parts of rural areas, and of much of south and central Somalia. The January 2013 report of the Secretary-General on Somalia noted that outside Mogadishu guerrilla and terrorist tactics are frequently used in the areas recovered from al-Shabab, including weekly in Baidoa (Bay) and Kismaayo and almost daily in the Afgooye and Merka areas."

30. Of particular relevance, is the recognition that "large parts of rural areas" in south and central Somalia remain in Al-Shabab control and that Al-Shabab remain able to engage in "guerrilla and terrorist tactics" in those areas which the report evidences with instances of killings.

31. In his report, Dr Hoehne sets out the current situation in southern central Somalia. He notes the continuing struggle between Somali government forces and AMISOM troops on the one hand and Al-Shabab on the other. He gives many referenced instances to the continuing violent struggle. At page 6 of his report Dr Hoehne refers to the most recent news item that he has found in relation to Warmaxan as follows:

“Warmaxan is in the Lower Shabelle Region. It is located along the road between Afgooye and Balidoogle. In both of these places AMISOM troops have a presence. However, inbetween, including in and around Warmaxan, Al Shabaab still has a presence. On 5 February 2013, a Somali website featured an article in Somali reading: Ciidanka AMISOM Oo Deegaanka Warmaxan Faarujiyay (the AMISOM troops cleared the area of Warmaxan). This article reports that after some fighting with Al Shabaab forces the foreign troops/AMISOM retreated from the area of Warmaxan and Islamist troops occupied the area. This is the most recent news I found from Warmaxan in relation to the political situation.”

32. That report, as it can be seen, notes that there was fighting between Al-Shabab and opposing troops which resulted in a retreat of those forces with Al-Shabab occupying the area.
33. We note the appellant’s evidence that his farm is about an hour’s walk from the main road and his home is about 30 minutes from that road.
34. In our judgment, on the basis of this evidence, we are satisfied that the appellant’s home area of Warmaxan remains (as it was in late 2011) in the control of Al-Shabab. In addition, although Al-Shabab may well have lost control of the main road that passes near to Warmaxan and the appellant’s home, that loss of control (perhaps in the sense of having checkpoints etc. set up) has not prevented Al-Shabab continuing to attack and put at risk travellers on that road.
35. As we have already indicated, Mr Richards accepts that if Al-Shabab is in control of the appellant’s home area then he is at risk on return to that area given his personal circumstances including his age and background. Thus, for the above reasons, we are satisfied that there is a real risk that if the appellant returned to his home area in Somalia, he would be persecuted for a Convention reason or at real risk of serious harm contrary to Art 3.
36. In the light of that finding, and Mr Richards’ concession that the appellant would be at risk of indiscriminate violence contrary to Art 15(c) of the Qualification Directive if he lived in Mogadishu, the appellant does not have the option of internal relocation to Mogadishu which is the only place in Somalia where it is suggested that he could plausibly relocate. That latter finding is, in our judgment, entirely supported by the country guidance decision of AMM. It is perhaps worth noting that in the OGN at para 3.9.26(h) it is stated that:

“For someone at real risk in a home area in South or Central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation.”

37. And whilst the OGN goes on to require a careful consideration of an “individual’s circumstances”, given the appellant’s age and lack of any roots or connection in Mogadishu we consider that Mr Richards’ position was not only justified but is correct. It is precisely the position we would reach having assessed the background evidence.
38. For these reasons, the appellant has established that he is a refugee and entitled to asylum in the UK.
39. In the light of that finding, it is not necessary for us to decide the alternative basis upon which Mr Hodgetts put the appellant’s claim, namely that even if not at risk in his home area, merely returning him to Mogadishu to live would, in itself, breach Art 15(c) of the Qualification Directive.

### **Decision**

40. The decision of the First-tier Tribunal to dismiss the appellant’s appeal involved the making of an error of law and its decision is set aside.
41. We remake the decision allowing the appellant’s appeal under the Refugee Convention and Art 3 of the ECHR.
42. The appellant’s appeal in reliance upon Art 8 of the ECHR is dismissed.

Signed

A Grubb  
Judge of the Upper Tribunal