IAC-AH-VP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01162/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 November 2014 and 16 March 2015	**On 21 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR OMAR MUSA AHMED
(ANONYMITY DIRECTION NOT MADE)

Respondent/Claimant

Representation:

For the Secretary of State:	Mr P. Armstrong (12.11.14) and Mr David Clarke (16.03.15), Specialist Appeals Team
For the Respondent/Claimant :	Mr R Sharma, Counsel instructed by Wimbledon Solicitors

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Callender-Smith sitting at Taylor House on 27 August 2014) allowing the claimant's appeal on asylum and human rights grounds against the decision by the Secretary of State to refuse to recognise him as a refugee or otherwise requiring international human rights protection, and to remove him as an illegal entrant/person subject

to administrative removal under Section 10 of the Immigration and Asylum Act 1999. The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is required for these proceedings in the Upper Tribunal.

2. The claimant is a national of Somalia, whose date of birth is 1 January 1972. He is recorded as having claimed asylum on 30 January 2004. He said he had arrived on 21 January 2004 at Heathrow Airport, and had entered using a forged passport in the name Osman Yussuf Abdi which had been taken away by his agent. In his screening interview, he said he had flown in from Kenya. He was from Hamar (in Mogadishu), and his clan was Hawiye, subclan Abgal. His wife and three children have been living in Yemen for three years. He had last seen his wife five months ago. He had been living in Yemen or Saudi Arabia for nine years. He had been deported from Saudi Arabia to Yemen. He had left Yemen because he could not get a job and also he did not have legal documents to stay in the country.

3. The claimant was issued with a Statement of Evidence Form to be returned on 19 February 2004, but he did not comply. His asylum application was refused on 8 March 2004. He subsequently absconded between 12 June 2006 and 23 July 2012.

4. In November 2012 the claimant made a fresh claim for asylum. On 4 February 2014 the Secretary of State gave her reasons for rejecting the fresh claim. He had not submitted any evidence to show that he was a member of the Hawiye clan, subclan Abgal. In any event, evidence showed that the Hawiye clan along with the Darod, Isaaq and Dir were major clans within Mogadishu. Whilst he had not established his membership of the Hawiye clan, if he was a member, he would face no risk upon return to Somalia due to the Hawiye being a majority clan and as there were no longer clan based militias in Mogadishu.

5. Consideration had been given to **AMM and Others Somalia CG 2011** which stated that Al-Shabab only withdrew from Mogadishu in early August 2011 so there could therefore still be a risk in relation to Article 15(c). But the objective evidence showed that there was now no risk in Mogadishu in relation to Article 15(c).

6. The claimant also relied on a medical report from Battersea Fields Practice dated 24 January 2013 in respect of his mental health. There was a health care centre within Mogadishu and it had been reported by the World Health Organisation that Amiptriptyline was available in Somalia. This was an alternative antidepressant to Sertraline. The claimant did not have a condition which would breach Article 3 of the ECHR, and there would be no flagrant denial of treatment for his condition in Somalia.

The Hearing Before, and the Decision of, the First-tier Tribunal

7. Judge Callender-Smith received oral evidence from the claimant and two siblings. In his subsequent determination, he accepted that the claimant had fled Somalia in 2004 because in 2003 and 2004 there was clan warfare between the two major subclans of the Hawiye. His clan members

forced him to fight, and he had fled the country to save his life. He further found that if there were any female family members of his in Somalia, he was unlikely to be able to contact them or identify them. His UK family no longer supported him financially, and would not do so if he was returned to Somalia. He had a diagnosed and significantly disabling mental health condition, undifferentiated type schizophrenia. That meant there was an increased risk of suicide if his mental illness remained untreated either in the UK or in Somalia. He had a genuine fear of being persecuted on return to Somalia because, having fled from interclan fighting in Mogadishu, he would be likely to be a target of the potentially fatal attentions of his own clan (having deserted them during interclan fighting) or Al-Shabab. His general mental state made him a vulnerable target for their attentions in respect of his imputed political beliefs. His fear for his personal safety was real, and that fear would be intensified because of his psychotic illness and could lead to further development of persecutory delusions.

The Grant of Permission to Appeal

8. On 24 September 2014 First-tier Tribunal Judge Levin granted permission to appeal for the following reasons:

> Given the judge found the [claimant] to be a member of the Hawiye clan which is a majority clan in Somalia and the respondent specifically raised in the RFRL (paragraph 20) that membership thereof would not place the claimant at risk on return, the judge's failure to assess the risk of return with reference thereto and with reference to the country guidance case of **AMM** and with regard to the background evidence concerning the claimant's clan arguably amounts to a material error of law which affected the outcome of the appeal.

The Error of Law Hearing in the Upper Tribunal on 12 November 2014

9. At the error of law hearing, Mr Sharma submitted that the error of law challenge was no more than an expression of disagreement with findings that were reasonably open to the judge on the evidence before him.

Reasons for Finding an Error of Law

10. I find that the judge failed to give adequate reasons for finding that the core of the claim was true. Despite being pressed in the screening interview on the question of whether he had a well-founded fear of persecution in Somalia, the claimant did not claim to have fled Somalia for the reason given by him in his appeal or indeed for any other reason.

11. The judge held at paragraph 30(c) that his account was likely to be correct given the significant presence of other family members of his in the UK, and the fact that they had been granted refugee status for "broadly similar reasons". This reasoning was insufficient. The judge did not identify any objective evidence which supported the proposition that there had been clan warfare between two major subclans of the Hawiye in Mogadishu in 2003 and 2004. The judge did not engage with the fact that the Hawiye clan was a majority clan, and hence members of the clan would not be recognised by the Secretary of State as being entitled to refugee status,

unlike members of a Somali minority clan. The judge did not identify the evidential basis for the highly improbable finding that the siblings had been granted refugee status for "broadly similar reasons". It is highly improbable that the siblings were granted refugee status for broadly similar reasons if they had presented themselves to the UK authorities as members of the Hawiye majority clan.

12. The fact that the claimant was a member of the Hawiye majority clan also impacted significantly on the issue of risk on return. In **AMM**, the Tribunal found that a real risk of Article 15(c) harm did not arise in the case of a person connected with *powerful actors*. Moreover, the fact that the claimant was a member of a majority clan made it unlikely that all his relatives had left Mogadishu, as they would not have been driven out by persecution.

13. Another theme of **AMM** is the threat posed by Al-Shabab. On this issue, the following statement by the Tribunal in **AMM** at paragraph [363] is pertinent:

> Before leaving the issue of Article 15(c) in Mogadishu, it is necessary to say something with an eye to the use that will be made of our country guidance findings in the next few weeks and months. In assessing cases before them, judicial fact-finders will have to decide whether the evidence is the same or similar to that before us (Practice Direction 12). To the extent it is not, they are not required to regard our findings as authoritative. As we have emphasised, it is simply not possible on the evidence before us to state that the changes resulting from Al-Shabab's withdrawal from Mogadishu are sufficiently durable. Far too much is presently contingent. As time passes, however, it may well be that judicial fact-finders are able to conclude that the necessary element of durability has been satisfied. How, if at all, that impacts on the assessment of risk on return will, of course, depend on all the other evidence.

14. The Tribunal's country guidance was largely based on the state of affairs in Mogadishu up to July 2011, when Al-Shabab was in control of much of it. Although the Tribunal took into account the military withdrawal of Al-Shabab from Mogadishu in August 2011, they deliberately did not downgrade their risk assessment in case the withdrawal proved to be a false dawn. Assessing Mogadishu in October 2011, as they were, it was too early to say whether the relative peace consequential upon the withdrawal was a durable one.

15. The judge erred in law in failing to ask himself the question as to whether in the light of the latest background evidence the relative peace had been durable and whether there was a real risk of the appellant being returned, or passing through, an area of Mogadishu that was controlled by Al-Shabab. According to the Danish-Norwegian Fact-Finding Missions to Nairobi and Mogadishu in April and May 2013, Al-Shabab had completely withdrawn from Mogadishu at the end of May 2012 and Al-Shabab was not trying to re-take Mogadishu. There was no struggle or front line in Mogadishu and people could now freely move around the city.

16. The judge relied on a UN Security Council letter dated 14 October 2013 to reject the respondent's contention that the presence of Al-Shabab in

Mogadishu had diminished. But, as argued in the grounds of appeal, except for the threat to persons associated with the government, the quoted extract from the letter was extremely vague and general in nature. It did not make clear which areas of Somalia it was addressing.

17. With regard to the medical evidence, the judge observed at paragraph 30(l) that the consultant psychiatrist's report was heavily dependent on a single observation/interview relating to a *self-reported* set of background circumstances presented by the claimant. It is apparent from the determination as a whole that the judge's acceptance of the diagnosis of Dr George is in part based on his acceptance that the claimant was telling the truth about the reasons why he had left Somalia in 2004 (whereas in his screening interview he had said he left Somalia nine years earlier) and that he had a genuine, not feigned, fear of being persecuted on return to Somalia because he had fled from inter-clan fighting in Mogadishu. As the judge's acceptance of the claimant's general credibility is flawed, his acceptance of Dr George's diagnosis of schizophrenia is consequentially unsafe.

The Resumed Hearing on 16 March 2015

18. I directed that there should be a further hearing before me to remake the decision, and that none of the findings of fact made by the First-tier judge should be preserved. I also directed the claimant's solicitors to use best endeavours to obtain and disclose the claimant's GP medical records from 2004 to date.

19. At the outset of the resumed hearing, Mr Sharma applied for an adjournment. This was because the claimant had failed to attend today, and his instructing solicitors had been without instructions from the claimant for about a week. Mr Sharma confirmed that the claimant had been informed of the resumed hearing before me. But he submitted that it would not be in the interests of justice for the hearing to proceed in his absence, without giving him the opportunity to give oral evidence. Although he had been notified of the hearing, it might be that his absence today was due to his mental health condition.

20. Mr Clarke opposed the adjournment request. On the available evidence, there was no guarantee, he submitted, that the claimant would appear on a future occasion.

21. I was not persuaded that it was in accordance with the overriding objective to grant Mr Sharma's adjournment request, having regard inter alia to the fact that the claimant's credibility on the issue of past persecution was not pivotal to a fair disposal of his appeal in the light of the latest country guidance (see below); and the medical evidence did not support the proposition that the claimant might not have understood the need to attend the hearing, even though he had been advised by his solicitors that he should attend.

22. Accordingly, the hearing proceeded on the basis that there was no additional evidence to be considered beyond that which had been considered by the First-tier Tribunal. Mr Sharma explained that his

instructing solicitors had not been able to obtain the claimant's GP medical records going back to 2004 (or going forward from January 2013) as the claimant had recently been re-housed, and the new surgery which he attended could not access the records held by the claimant's old surgery.

23. Mr Sharma referred me to **MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)** and submitted that the claimant fell into the risk category identified in sub-paragraph (xi) of the guidance:

> It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and have no real prospect of securing access to a livelihood on return will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.

24. Mr Sharma submitted that the appellant would be at increased risk on return due to is mental ill-health and his situation would also aggravated by the fact that he would had no family members to support him in Mogadishu. There was real risk of him of being an IDP on his return.

25. With regard to an Article 8 claim, the claimant had linguistic and cultural ties to Somalia. But there would be significant obstacles to reintegration into Somali society due to his mental ill-health and lack of family ties.

26. In reply, Mr Clarke submitted that the clan system in Mogadishu fulfilled the role of family. Even if the appellant did not have close family members remaining in Mogadishu, this did not matter as he could look to his powerful clan for support. Family in the UK had supported him financially in the past, and so it was not credible that they would not remit money to him in Mogadishu. Furthermore, the country guidance indicated that there were jobs available for low skilled workers in Mogadishu, such as waiters. In respect of an alternative claim under Article 8, Mr Clarke relied on **Akhalu (Health claim: ECHR Article 8) [2013] UKUT 00400 (IAC)** and **Bossadi (Paragraph 276ADE; suitability; ties) [2015] UKUT 0042(IAC)**.

Discussion and Findings

The Burden and Standard of Proof

27. In international protection claims, the standard of proof is that of real risk or reasonable degree of likelihood. Evidence of matters occurring after the date of decision can be taken into account.

Past Persecution or Serious Harm

28. Under Paragraph 339K, the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, will be regarded as a serious indicator of the person's well-founded fear of persecution or serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

Duty to Substantiate Claim for International Protection

29. Paragraph 339L of the immigration rules provides that it is the duty of the person to substantiate his claim. Where aspects of his claim are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

    (i) The person has made a genuine effort to substantiate his claim;

    (ii) All material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;

    (iii) The person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;

    (iv) The person has made his claim at the earliest possible time, unless the person can demonstrate good reasons for not doing so;

    (v) The general credibility of the person is established.

The Claimant's Evidence

30. At the hearing before the First-tier Tribunal, the claimant adopted as his evidence-in-chief a witness statement in which he said that he had last spoken with his wife and children in Somalia in 2004. He had arrived in the United Kingdom on 21 January 2004. His explanation for not pursuing his asylum claim was that he was suffering from a mental health condition and depression. He had been living with his sister Jawahir. He had started taking medicine for depression. He heard voices and experienced nightmares and panic attacks. He feared that someone was coming to kill him. He had been away from Somalia for over ten years. He was a very depressed person who had lost contact with his wife and four children. He regularly attended the local mosque on a daily basis to offer his prayers. If he was returned to Somalia, his life would be in danger from the armed militia and Al Shabaab. He would be targeted by the militia in Somalia due to his vulnerability. He had no skills to survive in Somalia, and no family to rely upon for his livelihood.

31. While Al Shabaab had a significant presence in Mogadishu, the fears expressed by the claimant were rational and well-founded. But he no longer has a well-founded fear of Al Shabaab or a well-founded fear of the danger posed by armed militia in Mogadishu.

The Country Guidance

32. The country guidance in **MOJ and Others** which is pertinent to this appeal is as follows:

    (i) The country guidance issues addressed in this determination are not identical to those engaged with by the Tribunal in **AMM and Others (Conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC)**. Therefore, where country guidance has been given by the Tribunal in **AMM** in respect of issues not addressed in this determination then the guidance provided by **AMM** shall continue to have effect.

(ii) Generally, a person who is an ordinary civilian … on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such that would require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time or of being viewed with suspicion either by the authorities as a possible supporter of Al Shabaab or by Al Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country…

(vii) A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members but not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.

(viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.

(ix) If it is accepted the person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all the circumstances. These considerations will include, but are not limited to:

- circumstances in Mogadishu before departure;
- length of absence from Mogadishu;
- family or clan associations to call upon in Mogadishu;
- access to financial resources;
- prospects of securing a livelihood, whether that be employment or self-employment;
- availability of remittances from abroad;
- means of support during the time spent in the United Kingdom;
- why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.

(x) Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially if there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.

(xi) It will therefore only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of being in circumstances falling below that which is acceptable in humanitarian protection terms.

33. Accordingly, even if it were true that the claimant had fled Mogadishu at the end of 2003 or the beginning of 2004 because of inter clan violence at that time, there is no longer a real risk of inter clan violence. The evidence establishes clearly that in Mogadishu there is no inter clan violence taking place and no real risk of serious discriminatory treatment being experienced on the basis of clan: see **MOJ** at paragraph [337]. So there are not substantial grounds for believing that the claimant would face reprisals from his sub-clan for allegedly refusing to take part in hostilities against another sub-clan of the Hawiye.

34. The clan has now become a social structure rather than a protector structure: see paragraph [339]. Some trades are dominated by one particular clan so that access may be made easier with clan sponsorship, but there is no evidence that an individual would be barred because of an absence of it: see paragraph [340]. While there is no guarantee that help will be available from clan members outside the close family network of a returnee, at least there is more likelihood of such a request being accommodated than if made to those unconnected by the bond of clan membership: see paragraph [343]. In the same paragraph, the Tribunal go on to cite the following extract from an UNHCR report of January 2014, in which the view was expressed that a returnee might be rather more confident of receiving help from his clan, if not a minority clan member:

> Persons belonging to minority clans … remain a particular disadvantage in Mogadishu … There remains a low sense of Somali social and ethical obligation to assist individuals from weak lineages and social groups. *This stands in stark contrast to the powerful and non negotiable obligations Somalis have to assist members of their own lineage* (my emphasis)

The claimant said that he was a member of the Hawiye majority clan when claiming asylum in 2004 and he has maintained that assertion by way of appeal. Since this assertion objectively weakened his asylum claim, rather than strengthening it, there is no reason to suppose that the claimant was inventing a majority clan membership when in fact he was a member of a minority clan. In the COI on Somalia dated 17 January 2012 at paragraph 19.13 it is said that the Abgal and Habr Gedir groups of the Hawiye clan are dominant in Mogadishu. The claimant says that he is a member of the Abgal sub-clan of the Hawiye, and so the overwhelming likelihood is that he would be able to return to Mogadishu to live in an area where there is a high concentration of Abgal clan members, and that he would be able to access practical and social support from such clan members.

The Medical Evidence

35. Turning to the medical evidence, it appears that the claimant first consulted a GP about his mental ill-health in October 2012. He was seen without an interpreter, and he reported a long history of feeling low in mood, difficulty in sleeping and anger issues. He had no thoughts of suicide or self-harm. He also did not attribute his symptoms to having suffered any traumatic experiences in Somalia before he left Somalia. He reported episodes of paranoia when he was chewing khat, a stimulant. The GP observed that talking rapidly and elation was a known affect of the drug, as was depression. The GP had a long discussion with him about

what to do next. He was strongly advised to stop taking khat, and he was started on sertraline. The appellant was booked to see the GP the next week, and it was proposed that he bring his uncle to interpret. If he was still paranoid after coming off khat, there might be a need to refer him to psychiatry.

36. He was apparently next seen again in January 2013. He had been taking sertraline, but he had missed three appointments. He reported he felt a bit better when he was on sertraline. He had stopped taking khat, and since he had stopped he had not felt paranoid. He told the GP he had come from Somalia eight years ago, and felt very low because he was unable to support his family back home. It is to be noted that he did not report to his GP that he had lost contact with his family back home. He also told his GP that he did not feel that he would ever kill himself or engage in self-harm.

37. The claimant was seen by Dr Tahira George for psychiatric assessment on 12 August 2014. In her subsequent report, she described him as a poor historian who gave limited information through a Somali speaking interpreter. Based on the history he provided and a mental state examination on 12 August 2014, she was of the opinion that he was suffering from an undifferentiated type of schizophrenia. He met the criteria for schizophrenia, but did not meet the criteria for a paranoid, disorganised or catatonic type of schizophrenia. The chronic use of khat had impacted on his mental health.

38. Dr George's diagnosis was entirely based on the claimant's report of his symptoms, rather than upon how he presented to her. At paragraph 16.1, she described the claimant as being alert and orientated with no fluctuation to his conscious level. While he appeared anxious, a superficial rapport was established and appropriate eye contact was maintained. There were no abnormal movements, either spontaneous or induced. His voice was low in volume, brief answers were provided, but they were normal in rhythm, tonality and spontaneity. She thought he was anxious about the outcome of the psychiatric assessment, but was not depressed. He was not distracted during the interview. He denied any current thoughts of self-harm, suicide or homicide, actions or plans.

39. Unlike what he told his GP, the claimant told Dr George that he had lost contact with his children and wife, and had become despondent as a result. He also reported persecutory beliefs about Somalian clans and said that sometimes he thought people were following him. He also claimed to hear voices in his head. At paragraph 16.5 Dr George referred to the claimant as having delusional beliefs about persecution from Somalian clans.

40. She said that during the assessment the claimant was willing and motivated to engage in treatment but was fearful about his safety if forcibly returned to Somalia and wished to be dead, although he did not admit to suicidal thoughts or plans.

Risk on return

41. While there is credible evidence that the claimant suffers from depression, there are not substantial grounds for believing that the claimant suffers from a mental health disorder of such gravity as to make him a suicide risk or as otherwise eligible for humanitarian protection and/or Article 3 ECHR protection on mental health grounds. In diagnosing the claimant as suffering from schizophrenia, Dr George was in part basing her diagnosis on the proposition that he had "delusional" beliefs about persecution. But on the claimant's case he is not deluded about what happened to him in the past; and, as I have observed earlier, insofar as his fear was related to Al Shabaab, this fear was a rational one. It is just not well-founded. Another inherent weakness in the diagnosis is that it is solely based on the claimant's self-reported history of events and symptoms, and, as Dr George acknowledges, he is a poor historian.

42. It is clear from Dr George's observations of him that the claimant does not present to the layman as mentally ill, and so the issue of social stigmatisation does not arise as a risk factor. It is also clear that the claimant does not have any cognitive impairment, and that he is able to function on a day-to-day basis. Some time ago he ceased to live with his sister, and moved into NASS accommodation. Although Dr George is of the opinion that the claimant had been suffering from mental ill-health since adolescence, this would not prevent the claimant from working or seeking work, according to what he said in his screening interview.

43. It is not shown that his mental disorder is even of such severity as to require medication, in that the claimant apparently did not seek any medical treatment at all for his condition before October 2012. There is a healthcare centre in Mogadishu where he can access appropriate treatment. In particular, amiptriptyline is available, which is an alternative antidepressant to sertraline: see paragraph 26 of the refusal letter. The claimant told Dr George that he had stopped taking antidepressant medication because it stopped him from sleeping. Dr George does not offer an opinion as to whether this is a likely side effect from a clinical perspective. But if it is, the obvious solution is for the claimant to be prescribed sleeping tablets as well, and there is no reason to suppose that sleeping tablets are not available in Mogadishu.

44. As the claimant's wife and children are members of a dominant clan in Mogadishu, and Mogadishu is now enjoying an economic boom, there are not substantial grounds for believing that they do not remain there with other family members and/or fellow members of their clan. But even if it is true that the claimant has lost contact with them, there is good reason to believe that the claimant would be able to re-establish contact with them on return to Mogadishu. Alternatively, if the claimant is given the benefit of the doubt on this question, the overwhelming likelihood is that the claimant will be able to draw upon a social support network provided by fellow clan members. Furthermore, as family members in the UK have supported the claimant financially in the past, there is no reason to suppose that they would be unwilling or unable to send remittances to the claimant in Mogadishu. It is not credible that family members here, who have professed great concern about the claimant's welfare, would not

ensure that he had sufficient funds so as to be able to maintain and accommodate himself adequately in Mogadishu.

45. At the hearing in the First-tier Tribunal, Said Musa Ahmed, one of the appellant's brothers here, said he would no longer support the appellant in Somalia because he wanted his brother to be independent. The implication of this evidence is that (a) Mr Ahmed has sufficient funds to support the claimant in Somalia, and (b) that he will support him *until* he becomes financially independent. In any event, the overwhelming likelihood is that, notwithstanding the position taken by the two siblings before the First-tier Tribunal (both of whom had a motive to misrepresent their true intentions in order to assist the claimant in his appeal), money would be found by the family here to support the claimant in Mogadishu, at least until he had re-established himself there.

46. In conclusion, I find that the claimant has not discharged the burden of proving that he should be recognised as a refugee; or that on his return to Somalia he would face a real risk of harm of such severity as to cross the threshold of Article 3 ECHR. By the same token, there are not substantial grounds for believing that the claimant is eligible in the alternative for humanitarian protection or subsidiary protection.

47. In respect of an alternative claim under Article 8 ECHR, the claimant does not have a viable family life claim under Appendix FM. With regard to a private life claim under Rule 276ADE(vi) the claimant has not discharged the burden of proving there would be very significant obstacles to his integration into the country to which he would have to go if required to leave the UK. As was acknowledged by Mr Sharma, the claimant retains cultural and linguistic ties to Somalia. He may well also retain family ties to Somalia. There would be a degree of hardship in returning to Mogadishu after a long absence abroad, but the hardship will be mitigated significantly by the claimant's membership of a dominant clan in Mogadishu, and also by the financial support which he can expect to receive from family members here.

48. Turning to a claim outside the Rules, questions 1 and 2 of the **Razgar** test should be answered in the claimant's favour with regard to the establishment of private life in the United Kingdom. Question 3 and 4 of the **Razgar** test should be answered in favour of the Secretary of State. On the crucial question of proportionality, I do not consider that the asserted loss of contact with his wife and children in Somalia, or his mental health condition, are factors which tip the scales in the claimant's favour in the proportionality assessment. Under Section 117B of the 2002 Act, the public interest considerations which are in play largely weigh against the claimant. It is in his favour that he must be able to speak English, as he communicated in English with his GP. But he is not financially independent, and he has built up a private life here unlawfully. I find that the interference consequential upon the decision appealed against is proportionate to the legitimate public end sought to be achieved, which is the prevention of disorder and the protection of the country's economic wellbeing.

Notice of Decision

The decision of the First-tier Tribunal allowing the claimant's appeal contained a material error of law, and accordingly the decision is set aside and the following decision is substituted: the claimant's appeal is dismissed on all grounds raised.

No anonymity direction is made.

Signed Date **16 March 2015**

Deputy Upper Tribunal Judge Monson