



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

Appeal Number: AA/07962/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4 March 2015**

**Decision & Reasons Promulgated
On 1 May 2015**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MOHAMUD ABDI ISSE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Whitwell

For the Respondent: Ms Mascord

DECISION AND REASONS

1. Mr Isse is a citizen of Somalia born in 1989. He appealed against a decision of the Secretary of State made on 23 September 2014 to give directions for removal. He was refused asylum.
2. Although in proceedings before me the Secretary of State is the Appellant, for convenience I keep the terms as they were before the First-tier Tribunal. Thus, Mr Isse is the Appellant and the Secretary of State is the Respondent.

3. The basis of the Appellant's claim can be stated in brief. He is a member of the Ashraf minority clan. His brother was killed in clan warfare. His home was raided regularly and his family beaten. He suffered various other problems as a result of his clan membership. Another of his brothers was killed in a dispute at the market.
4. In 2005 he was abducted by the Juba Valley Group and forced to work on a farm. He escaped after a year and returned home.
5. He began to run a stall in his home town, Kismayo. In May 2010 he was detained and tortured by Al Shabaab for two weeks. In October 2011 he was again detained and tortured by Al Shabaab this time for a month after disputing the tax he was being forced to pay them.
6. During his second detention a member of Al Shabaab forced the Appellant's sister to marry him. The Appellant approached the man's family to complain about this and became a target. His uncle was killed when the sister's husband went to the Appellant's stall looking for him and an argument ensued between the husband and the uncle.
7. The Respondent accepted the Appellant's nationality, that he was from a minority clan, that his two brothers were killed, that his father disappeared and that his family had suffered at the hands of the majority clan over the period of time specified by the Appellant. It was also accepted that he was detained by Al Shabaab after refusing to pay tax. Despite these acceptances the Respondent refused the application on the ground that it was safe for the Appellant to relocate to Mogadishu.
8. He appealed.
9. Following a hearing at Taylor House on 18 December 2014 Judge of the First-tier Tribunal Meah allowed the asylum claim.
10. His findings are at paragraphs [9ff] of his determination. The Respondent's position at the hearing before the First tier as to the historical account was unchanged. The sole issue was whether return to Mogadishu was a viable option for the Appellant.
11. The judge quoted from the headnote of **MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)**.
12. Moving on to consider the Appellant's circumstances the judge found (at [13]) that he left Mogadishu at age two years and that he *'has no social network available to him there. His mother, a sister and two children are living in Ethiopia as refugees. He therefore has no living relatives anywhere in Somalia'*.
13. At [14] he rejected an argument that the Appellant would be able to resettle in Mogadishu as he could set up in business there given that he had previously sold sweets in his home town of Kismayo. He accepted the Appellant's response that he had merely had a small table from which he sold sweets and samosas and that *'he would not be able to establish himself and resettle in Mogadishu as he did not know anyone there'*.
14. At [15] he found that *'he is not in contact with anyone in Somalia'*, that his UK sister and family are entirely reliant on public funds and would not be able to send him

remittances if he was sent back to Somalia. Also, he is living with his sister, and surviving on NASS payments and food from her.

15. At [16] the judge found that the Appellant's sister in the UK *'could not send funds to (him) and there was no one else anywhere who could assist him financially either. He has lost touch with the paternal uncle who helped him leave Somalia and the mother and sister are refugees in Ethiopia themselves'*.
16. The judge concluded (at [17]) by finding that internal relocation to Mogadishu was *'not an option'* for the Appellant. He is *'a person with no former links to the city and he is also a person who will not have access to any funds there. He has no family or social ties to the city and it will therefore be practically impossible for him to establish a home there'*.
17. He went on: *'I find in these circumstances, and the lack of any financial support there, (such) will pose a real risk of him having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall well below acceptable humanitarian standards. ... I should say that I do not find that the Appellant is a person who will be able to take advantage of any economic boom that is currently taking place in Mogadishu given his particular circumstances'*.
18. The Respondent sought permission to appeal which was granted by a judge on 20 January 2015.
19. At the error of law hearing before me, Mr Whitwell made two points. First, noting the headnote of **MOJ** at (xi) he submitted that the judge failed to give adequate reasons as to why the Appellant would not be able to secure a livelihood in Mogadishu. While it was accepted that he was from a minority clan and without access to remittances from abroad these were not the only issues that required consideration. He is young and healthy. It was not clear why the judge concluded that he would (per (xi)) *'have no real prospect of securing access to a livelihood on return'*.
20. Secondly, if not with the Respondent on the first ground, the judge's decision should not have been to allow the appeal on asylum grounds. Rather, it should have been allowed on Article 3 human rights grounds.
21. In reply Ms Mascord submitted that the judge in a careful analysis of the Appellant's particular circumstances, which included that he has no family support there, left Mogadishu at a young age, would receive no remittances, and was no longer in contact with his uncle who had funded his trip, had properly applied the test set out in (ix)ff and found it satisfied. The Respondent's challenge amounted to no more than a disagreement.
22. In considering this matter, as indicated, none of the judge's findings are challenged. The issue is what conclusion from these facts as to risk was the judge entitled to reach and whether adequate reasons had been given.
23. The judge correctly paid heed to the up-to-date Country Guidance case of **MOJ**. He noted the headnote (which is an accurate reflection of what is stated at paragraph 407 of **MOJ**).
24. He properly directed himself in light of the undisputed facts, to headnote (ix) and (x) which is an accurate reflection of paragraph 407 (h).

25. Headnote (ix) states *'If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear 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'*.
26. It is accepted that the Appellant has not been in Mogadishu since the age of two and has no nuclear family or close relatives in the city.
27. Headnote (ix) continues: *'These considerations will include, but are not limited to...'* It goes on to list eight factors. The first three are: circumstances in Mogadishu before departure; length of absence from Mogadishu; family or clan associations to call upon in Mogadishu. It seems to me that the judge addressed these. As indicated the Appellant has not been in Mogadishu since the age of two. As the judge found (at [13]) he has no social networks available to him there. He has no relatives there. Indeed, he has no living relatives anywhere in Somalia. He is also from a minority clan.
28. Other factors to be considered are *'access to financial resources; availability of remittances from abroad; means of support during the time spent in the UK; why his ability to fund the journey to the West no longer enables an Appellant to secure financial support on return'*.
29. In my judgment the First-tier judge considered these matters. He found that the Appellant would not have access to financial resources or remittances from abroad. Relatives in the UK are *'reliant entirely on public funds'*. He is not in contact with anyone in Somalia [15]. As for support received in the UK, he is *'surviving on NASS payments and (his sister) sometimes provides him with food'* [16]. As for ability to fund the journey to the UK, he has *'lost touch with the uncle who helped him leave Somalia and the mother and sister are refugees in Ethiopia themselves'*.
30. The remaining factor is *'prospects of securing a livelihood whether that be employment or self-employment'*. It is this aspect of the judge's decision that concerned Mr Whitwell who noted that the Appellant was young and apparently healthy and had earned an, albeit modest, living previously. It was unclear why he *'would not be able to access the economic opportunities that have been produced by the "economic boom"'* (x).
31. It is clear that the judge was aware of the *'economic boom'* referred to in **MOI** (at paragraphs 344 ff) and at headnote (x). He referred to it at [17]. However, he found the Appellant's previous economic activity (selling sweets and samosas from a small table in Kismayo) to be so modest as to be insignificant. He found that he has no clan or family or social support and would not be in receipt of remittances from abroad (xi). He is not in contact with anyone there. Such, *'in his particular circumstances'* which also included *'no former links to the city'* (Mogadishu) and *'no access to any funds there'* would mean it would be *'practically impossible for him to establish a home there'* and as a result secure access to a livelihood on return (xi). These were conclusions he was entitled to reach on the evidence before him. He has addressed the requirements of paragraph 407f (accurately reflected in the head note (ix), (x) and (xi)), and given adequate reasons for reaching his conclusion.
32. He then went on (at [17]) having found that the Appellant is from a minority clan, has no former links to the city, no access to funds, no other form of clan, family or social support and an absence of means to establish a home and some form of ongoing support, to conclude there would be a real risk of his having no alternative

but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that fall below acceptable humanitarian standards (xii).

33. In my view this was again a conclusion he was entitled to reach on the evidence found. He has given adequate reasons.
34. That in such a situation '*there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards*' (xii) is an accurate reflection of paragraph 420 of **MOJ** which reads:

'While it is likely that those who do find themselves living in inadequate makeshift accommodation in an IDP camp will be experiencing adverse living conditions such as to engage the protection of Article 3 of the ECHR, we do not see that it gives rise to an enhanced Article 15(c) risk since there is an insufficient nexus with the indiscriminate violence which, in any event, we have found to be not at such a high level that all civilians face a real risk of suffering serious harm. Nor does the evidence support the claim that there is an enhanced risk of forced recruitment to Al Shabaab for those in the IDP camps or that such a person is more likely to be caught up in an Al Shabaab attack of which he or she was not the intended target.'

35. I conclude that the judge's error was not that he failed to give adequate reasons for reaching the conclusion on the undisputed evidence before him as to risk, but rather the legal consequence. He should not have allowed the appeal on asylum grounds. Humanitarian protection is not appropriate. The appeal should have been allowed on human rights grounds (Article 3). I accordingly substitute that decision.

Notice of Decision

The First-tier judge's decision shows an error of law. His decision is set aside and remade as follows:

The appeal is allowed on human rights grounds (Article 3).

No anonymity direction is made.

Signed

Date **4 March 2015**

Upper Tribunal Judge Conway