



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11015/2013

THE IMMIGRATION ACTS

Heard at Field House
On 29 August and 19 December 2014

Determination Promulgated
On 13 January 2015

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

H A M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Masood instructed by Aden & Co Solicitors
For the Respondent: Mr S Walker (29/8/14) and Miss A Everett (19/12/14), Senior Presenting Officers

DECISION AND REASONS

1. The Upper Tribunal made an anonymity direction in its decision of 2 September 2014. That direction is maintained. The appellant is granted anonymity unless and until the Tribunal or other appropriate court directs otherwise. No report of these proceedings shall directly or indirectly identify the appellant. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a national of Somalia, born 28 October 1996. She arrived in the United Kingdom on 9 January 2013 and claimed asylum at the Asylum Screening Unit the following day. This application was refused on 16 March 2013, however, the appellant was granted leave to remain until the age of 17½ - in line with the Secretary of State's policy relating to unaccompanied minor asylum seekers. The appellant brought an appeal to the First-tier Tribunal against the decision to refuse her asylum, pursuant to Section 83(2) of the Nationality, Immigration and Asylum Act 2002.
3. This appeal was dismissed on "asylum grounds", "humanitarian protection grounds" and "human rights grounds" in a determination of First-tier Tribunal Judge Roopnarine-Davies of 30 April 2014. Designated Judge Beg granted the appellant permission to appeal against Judge Roopnarine-Davies' determination in a decision of 22 May 2014, thus the matter came before me on 29 August 2014.

Error of Law

4. For reasons set out in a decision of 2 September 2014¹ I set aside the determination of the First-tier Tribunal, directed that the Upper Tribunal would undertake the remaking of the decision and adjourned the hearing relating to such remaking in order to allow the appellant to obtain up-to-date evidence as to the background situation in Somalia. I concluded in my decision of 2 September 2014 that the findings of primary fact made by the First-tier Tribunal are to remain standing. Neither party has sought to persuade me since the making of that direction that this should not be so.

Re-making of decision

Legal Self-Direction

5. By section 84(3) an appeal under section 83 must be brought on grounds that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention.
6. It is for the appellant to show that she is a refugee. By virtue of Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.
7. On 9 October 2006 the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Qualification Regulations") came into force and some consequential changes in the Immigration Rules were inserted after

¹ The substance of which is attached hereto as Appendix A

paragraph 339 of the existing Rules. Under the Qualification Regulations a person is to be regarded as a refugee if they fall within the definition set out in Article 1A of the Refugee Convention (see above) and are not excluded by Articles 1D, 1E or 1F of the Refugee Convention (Regulation 7 of the Qualification Regulations).

8. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This has been expressed as a “reasonable chance”, “a serious possibility” or “substantial grounds for thinking” in the various authorities. That basis of probability not only applies to historical fact, but also to the question of persecution in the future were the appellant to be returned to Somalia.

Country Guidance

9. In the period between that two hearings before me, the Upper Tribunal promulgated a country guidance decision in relation to the circumstances in Mogadishu: MOJ and Others (return to Mogadishu) Somalia CG [2014] UKUT 00442, the headnote to which reads 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” (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to 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 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.
 - iii) There has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM.
 - iv) The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab’s resort to asymmetrical

warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.

- v) It is open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of “collateral damage” in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so.
- vi) There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West.
- 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 who are 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 that a 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 of 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 as 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 living in circumstances falling below that which is acceptable in humanitarian protection terms.
- xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of 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 below acceptable humanitarian standards.”

Facts of the Appellant's case

10. Turning to the relevant circumstances pertaining to this appellant:
 - (i) She is a female national of Somalia born 28 October 1996;
 - (ii) She originates from a village in Somalia called Awdheegle²;
 - (iii) She is “fairly well educated” [paragraph 12 of the FtT’s determination];
 - (iv) Her close family members remain living in Awdheegle and she has kept in touch with them [14 & 21];
 - (v) She has an aunt from the Isaaq clan living in the United Kingdom [16];
 - (vi) She also has family members living in Burao in Somaliland [21];
11. At the hearing Mr Masood also quite properly conceded that the First-tier Tribunal had rejected evidence from the appellant, and his aunt, to the effect that the appellant belongs to the minority Begeledi clan.

Discussion

12. It is necessary for me to first determine whether the appellant has established a well-founded fear of persecution in her home area of Awdheegle or, alternatively, *en route* from the point of return to Somalia, which is accepted to be Mogadishu airport, to her home village of Awdheegle.
13. According to the map produced before me, Awdheegle is situated approximately 50 kilometres east of Mogadishu airport. The circumstances in Awdheegle and its surrounding area did not fall for consideration by the Upper Tribunal in its decision in MOJ.

² Spelling taken from Dr Hoehne’s report

14. Having considered the entirety of the background evidence before me I am not satisfied, even to the lower standard, that Al Shabaab are currently in control of Awdheegle or the area surrounding it. However such area is one where fighters from Al Shabaab, the Somali National Forces and AMYSOM all still have a presence.
15. The appellant has provided the Tribunal with two reports authored by a Dr Hoehne. Dr Hoehne has, *inter alia*, studied Somali culture, history and politics since 2001 and has spent time in Somaliland and Puntland. As well as monitoring news and country reports he maintains contact with a network of informants in the region by internet and telephone. He gave both written and oral evidence to the Tribunal in MOJ. Dr Hoehne's first report for the instant appellant, dated 25 April 2014, was before the First-tier Tribunal and pre-dates the decision in MOJ. His most recent report is dated 15 December 2014.
16. In this later report Dr Hoehne asserts that the likelihood of the appellant encountering Al Shabaab fighters whilst travelling between Mogadishu to Awdheegle is "*very high*". Taking into account what I say below about Dr Hoehne's evidence, I accept, having considered the evidence before me as a whole - including evidence as to the history of significant fighting between Al Shabaab and the Somali Forces in the region which the appellant's home village is situated - that there is a real risk that the appellant would encounter Al-Shabaab forces if she were to travel between Mogadishu airport and Awdheegle.
17. The Upper Tribunal, in its the country guidance decision of AMM and Others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445, identified the type of treatment reasonably likely to be meted out by Al Shabaab personnel to those whom it perceives do not to conform to its particular religious views and practices. Such treatment without doubt amounts to persecution.
18. Although the appellant only left Somalia in 2012 I find that there is, at least to the lower standard, a risk that Al Shabaab would perceive her as a westernised person not conforming to their ideals, this being so given that the two year period she has spent in the United Kingdom encompassed a formative time in her life between childhood and adulthood. She is as a consequence in my conclusion at real risk of suffering from persecutory treatment *en route* from Mogadishu airport to Awdheegle, given that I have already found there is a reasonable likelihood of her encountering Al-Shabaab forces on such journey.
19. I next turn to the issue of internal relocation and whether it would be unduly harsh to require this appellant to live elsewhere in Somalia, and in particular in Mogadishu. In coming to my conclusions on this issue I have applied the approach set out in the *ratio* of the opinions of their Lordships House in AH (Sudan) [2007] UKHL 49.
20. It is to the issue of internal relocation that the decision of MOJ has most bearing in the instant appeal.

21. In his latest report written for this particular appellant Dr Hoehne states, *inter alia*, as follows in relation to the decision in MOJ:

“[26] ... In my view the severity of the ongoing fighting ends security in Mogadishu (and southern Somalia, which, however, was not at stake in the hearing) *was not adequately taken into consideration* by the Tribunal in the case of MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC). While, as mentioned above, Al Shabaab has been durably evicted from Mogadishu and pushed back in many parts of southern Somalia this does not mean, in my view, that Mogadishu in particular and southern Somalia in general is becoming fine as we speak.

[27]. *A more realistic assessment* in my view would recognise that, first, Al Shabaab is still active and fighting continues, albeit at a lower scale, with less indiscriminate use of force. Second, even if things continue to become better and stability increases in southern Somalia, *the region is at best approaching a kind of zero hour* comparable with Germany in May 1945 or other fresh post war settings. One can hope for a decisive change from here, which could unfold in years to come. But at the moment much is still unsettled, there is not yet durable stability and respect for human rights, the government forces are not reliably respecting civilian and many people still suffer from humanitarian crisis, criminality or abuse of power by government officials.” [Dr Hoehne's emphasis]

22. To the extent that Dr Hoehne disagrees with the conclusions in MOJ, I reject his evidence. Although his views are clearly based on more recent evidence than that which was considered by the Tribunal in MOJ, the dates of hearing for MOJ being in February 2014 and September 2014, the evidence that Dr Hoehne identifies in his report does not lead me to conclude that the circumstances in Mogadishu have deteriorated since the decision in MOJ was promulgated. Indeed that does not appear to be Dr Hoehne’s position either. Dr Hoehne appears to assert that the Tribunal in MOJ were not accurate in its assessment of the background situation in Mogadishu and southern Somalia. As I have indicated above, there is nothing in the evidence put forward by Dr Hoehne in his report, including evidence contained in the footnotes to which links have been provided, which leads me to conclude that I should not follow the findings in MOJ, and I do so.
23. Whilst the following passages in MOJ do not represent the entirety of the Tribunal’s consideration of Dr Hoehne’s evidence, they do reflect the general approach it took to such evidence:

“Dr Hoehne provided very little evidence directly concerning the circumstances facing an unexceptional or ordinary returnee from the Diaspora.” [138]

“At paragraph 26 of his report Dr Hoehne said that there was an additional risk for ordinary civilians from undisciplined soldiers ... We do not accept this evidence of Dr Hoehne. His own interpretation of this does not appear, on its face, to be justified.” [151]

“Dr Hoehne was asked in oral evidence how many people in Mogadishu are living in IDP camps. His response was 369,000.

Once again, we can detect in that answer a propensity to present information in the least positive manner possible. It seems to be clear that 369,000 is the number of people living in Mogadishu whose place of residence has changed in response to past concerns about security in their home area and not the number of people actually living in Mogadishu in IDP camps. There is a vitally important distinction to be made in that respect which was identified by Dr Hoehne himself...He said that people who moved their place of residence within Mogadishu are still regarded as part of the IDP population..." [154 to 155]

"This illustrates a characteristic that is apparent from Dr Hoehne's evidence generally that he consistently presents the least positive interpretation of the source material he draws upon. [158]

Pressed further to explain who does benefit from the economic development in Mogadishu, Dr Hoehne said:

"A very tiny fraction of the elite. The vast majority of people are struggling to survive ..."

We do not accept that to be a correct view. The evidence is of substantial inward investment in construction projects and by entrepreneurs returning to Mogadishu to invest in business activity. In particular we heard much evidence about hotels and restaurants and a resurgence of the hospitality industry..." [159]

24. Dr Hoehne's propensity to present the least positive interpretation of the source material was also apparent from his evidence before me. In paragraphs 29 to 31 of his latest report Dr Hoehne identifies background evidence relating to gender based violence in Somalia, quoting from (i) a report of 26 October 2014 that over 1,000 cases of gender based violence had been reported in Mogadishu alone in the first six months of 2014 and (ii) from an article in The Guardian citing from a United Nations report that there had been 800 cases of sexual and gender based violence in Mogadishu over a six month period in the previous year and that a majority of such cases go unreported.
25. The evidence referred to and relied upon by Dr Hoehne led him to state as follows in this regard:

"The fact that gender based violence is an endemic problem in Somalia was highlighted in ... my previous report" [31]

And in paragraph 32:

"Given the prevalence of gender based violence in Mogadishu and much of southern Somalia and given the fact that much of it is also perpetrated by security forces I see a high risk for [the appellant] as a young and unaccompanied female to become a victim of gender based violence ..."

And then in paragraph 36:

"Also upon encountering Somali national and AMISOM Forces in the war zone between Mogadishu and Awdheegle (the appellant) would certainly run a

considerable risk of being sexually harassed. I have outlined above (paragraphs 29-31) that gender based violence is endemic in southern Somalia.”

26. I find that Dr Hoehne’s conclusion that gender based violence is endemic in Southern Somalia and prevalent in Mogadishu is not supported by the evidence he relies upon to found such conclusion. On the available evidence before me I find that it has been established that there is some sexual based violence in Mogadishu and southern Somalia, but that the statistics and evidence relied upon Dr Hoehne come nowhere near supporting a conclusion that it is endemic in the region, even taking into account the fact that there is a likelihood of significant under reporting of such incidents.
27. Having considered the evidence before me as a whole I do not accept that it has been established that the appellant would be at real risk of being subjected to gender based violence, or indeed violence for any other reason, in Mogadishu – this being despite her age and lack of familiarity with that city.
28. Turning then to further consider the features of this appellant’s case which are relevant to a consideration of whether it would be unduly harsh for her to return to, and live in, Mogadishu. Clearly the appellant’s age is of significance, given that she has only just turned 18. She has no previous connections to Mogadishu and neither does she have any family living there at present.
29. The First-tier Tribunal did not accept that the appellant had demonstrated that she is from a minority clan and consequently I proceed on the basis that she is from a majority clan. Although the economic situation in Mogadishu is improving the appellant would still need to find accommodation and a means to support herself in Mogadishu, the likely consequences of her not doing so being that she would end up living in an IDP camp.
30. I accept, given her age, gender and her lack of knowledge of Mogadishu that, absent some support structure in that city the appellant will not be able to readily obtain employment and accommodation there. Whilst the likelihood of her obtaining accommodation and employment is increased by the fact that she is of a majority clan, having considered what is said in paragraphs 337 to 343 of MOJ and the other evidence before me, I find that if it were to be established that the only possible support mechanism for the appellant in Mogadishu would be from clan members outside of her close family network, it would be unduly harsh for her to live there given the still limited prospect of her obtaining employment and accommodation in the short term.
31. The difficulty for the appellant in this appeal, however, derives from the First-tier Tribunal’s conclusion that she has failed to demonstrate that she has not kept in touch with her family members in Awdheegle [21]. It was decided not to call the appellant to give evidence before the Upper Tribunal on this, or indeed any other, issue. Given the findings of the First-tier Tribunal and the lack of further evidence before me, I proceed to decide this appeal on the basis that the appellant has maintained contact with her close family members in her home village. I further find

that it has not been demonstrated, even to the lower standard, that she could not make contact with those family members in advance of her departure from the UK in order to inform them of the time and place of her return to her home country.

32. It is to be recalled that Awdheegle is only approximately 50 kilometres away from Mogadishu. The appellant has not established that those of her family members who currently live in Awdheegle would not be able or willing to travel to Mogadishu airport and/or the city itself in order to assist and support her upon her return.
33. Although I have found that there would be a real risk to the appellant if she were to travel between Mogadishu airport and Awdheegle immediately upon her return, this was as a consequence of her being a lone female who would have recently arrived in Somalia after having spent a two-year period during her formative years in the United Kingdom. The appellant's family members have lived in Awdheegle for a considerable period of time, including during a period when Al Shabaab had a significantly greater presence in that area than they do now. The First-tier Tribunal did not accept that the appellant or her family members had been persecuted in that area. There is no credible evidence before me which leads me to conclude that it has been demonstrated, even to the lower standard, that the appellant's family members would have any difficulties in making the short journey from Awdheegle to Mogadishu to provide support for the appellant, or that they would be unwilling to do so.
34. Given this finding, I conclude that the appellant would not be a lone female upon return to Mogadishu but would have a support network in place, such support being provided to her by her nuclear family members. In addition, and relating to the financial circumstances that the appellant may face upon return, the First-tier Tribunal concluded that the appellant's UK based aunt had spent considerable resources and time in travelling to Somalia and bringing the appellant back to the United Kingdom. Thereafter, she continued to provide support to the appellant whilst in the United Kingdom. There is no credible evidence before me to the effect that the appellant's aunt would not be able or willing to provide the appellant with some financial assistance upon her return to Mogadishu and, in the absence of such evidence, I conclude that such support would be available to the appellant.
35. Furthermore, as identified in MOJ, in addition to the support the appellant would receive from her aunt there is also provision for financial support to be provided to her by the United Kingdom authorities, albeit this being limited to a lump sum payment.
36. There is currently an economic boom in Mogadishu and there are clearly employment opportunities there. The appellant is a "fairly well educated" woman and there is nothing immediately obvious from the evidence before me that there is anything that would prevent her from seeking and obtaining some level of employment in Mogadishu, albeit this may be in a 'low level job'. It maybe that such opportunities will not present themselves in the short term, given that she has no experience of the city and has not built up any connections there, but she will return

with a lump sum payment from the UK authorities, will have some financial support from her aunt and will have her nuclear family members, and to a lesser extent her clan members, to provide support and assistance to her in Mogadishu.

37. Drawing all of this together, whilst the appellant would no doubt have some difficulties and challenges upon return to Mogadishu, she is not at real risk of being subjected to violent treatment there, neither do I accept that she would find herself destitute on the streets or left with no option but to live in an IDP camp. Having considered the circumstances the appellant is likely to face in Mogadishu as a whole, and in particular the fact that she is from a majority clan, that it is reasonable to assume that her aunt in the United Kingdom would be able and willing to provide for her financially at least for some time after her arrival in Mogadishu, and that her family members, who currently live just outside of Mogadishu, would provide support and assistance for her there, I conclude that it has not been established that it would be unduly harsh to require the appellant to relocate to Mogadishu. The appeal must therefore be dismissed on Refugee Convention grounds.
38. This being an appeal brought pursuant to section 83 of the 2002 Act, the appellant is not entitled to pursue any other grounds. However for the sake of completeness I find that having considered the decision in MOJ and the other evidence before me I am satisfied that it has not been established to the lower standard that the circumstances the appellant would face upon return to Mogadishu would entitle her to Humanitarian Protection or that they would lead to a breach of her Article 3 ECHR rights.

Decision

The decision of the First-tier Tribunal is set aside for the reasons previously given.

The appellant's appeal is dismissed.

Signed:



Upper Tribunal Judge O'Connor
Date: 22 December 2014

APPENDIX A

“4. It is prudent to set out the following key paragraphs from the First-tier Tribunal’s determination:

19. Awdhigley is on the outskirts of Mogadishu. The expert’s opinion is that Awdhigley is ‘located in an area that has been contested between Somali government forces and Al Shabaab for a long time. AS exercised control in the area until mid-2013 and the group is still operating around the place. As recently as 27 February 2014 AS and government forces clashed in the area’. A single incident or intermittent clashes does not on any view show substantial grounds for believing that there is a situation of internal armed conflict in the appellant’s home area that puts civilians at risk as obtains in Mogadishu. The expert’s view (para 49) is that the group remains in control of most of southern and central Somalia and ‘Analysts say the group’s resilience is likely the result of significant support from local clans and the perception among elders that it remains a plausible alternative to corrupt institutions in Somalia’. I have already found that this appellant and her family are not at risk from Al Shabaab. She has been in the UK for only 13 months. She will not be returning as a child or as a returnee without recent experience of living in Somalia and therefore at greater risk from Al Shabaab. I find that it is in her best interests to be with her family. She stated that she did not encounter any checkpoints on her journey out of her home area. In any event she will be able to show that she is returning to her family who on the evidence before me are living in Awdhigley.

20. The security situation in Mogadishu city remains the same as confirmed the expert and the copious background evidence in the appellant’s latest country information and supplementary bundles (Key Passages index) is as in AMM above but the appellant will not be returned to Mogadishu. Considering the evidence as a whole and applying the lower standard of proof I conclude that this appellant does not face a real risk of serious harm in Awdhigley if she is returned there. The question of a safe relocation alternative does not arise.”

5. The appellant was granted permission to appeal to the Upper Tribunal by Designated Judge Baird, in a decision of 22 May 2014. Thus the matter came before me.
6. At the hearing before me Mr Walker, quite properly, accepted that the First-tier Tribunal’s determination contains a number of errors of law, which require it to be set aside. Given this concession I set out only briefly why I agree that this is so.
7. First, in paragraph 19 of the determination the FtT judge identifies that he proceeded on the basis that the appellant would be returned to Somalia as an adult. This, though, is not the case. At the time of the First-tier Tribunal’s determination the appellant was only 17½ years old and, indeed, she still appears as a minor before me. It is trite that when considering an appeal brought on asylum grounds a Tribunal must determine whether there is a risk to the appellant on the basis of the circumstances as they appertain at the date of its decision. In this case the FtT judge ought to have proceeded on the basis that the appellant would be returning to Somalia as a minor. The judge therefore misdirected himself in paragraph 19 of the determination.
8. Second, in paragraph 20 of the determination the FtT judge directed himself that the appellant would not be returned to Mogadishu. This direction is significant given what the judge says about Mogadishu in the passages immediately preceding this direction. As Mr Walker accepted, the appellant would be returned to Mogadishu airport. Nowhere in the determination does the FtT judge consider what will happen to the appellant on her arrival as a minor at Mogadishu airport.

9. Third, and linked to the previous error, is the fact that the FtT judge was required, but failed, to determine the risk to the appellant when travelling from Mogadishu airport to her home village of Awdhigley. The closest the judge comes to considering this issue is in paragraph 19 of his determination, where he observes that the appellant did not encounter any checkpoints on her journey from her home area to the United Kingdom. The inference from this passage is that it was the judge's view that because the appellant did not have any difficulties *en route* from her home village to her departure point from Somalia, she would not have such difficulties on the return journey.
10. This rationale is not, however, sustainable, given that (i) the FtT judge makes no finding as to where the appellant departed Somalia from (ii) he misdirects himself as to her arrival point (as to which see above) and (iii) there has been no analysis of whether the conditions in Somalia, and more particularly on the route of travel to the appellant's home village, have changed since the appellant's departure.
11. Fourth, the judge took into account an irrelevant factor in paragraph 19 of the determination when concluding that if stopped at a checkpoint any risk to the appellant would be ameliorated by the fact that "she will be able to show that she is returning to her family". This conclusion entirely fails to pay heed to what is said in paragraphs 613 and 614 of the country guidance decision in AMM.
12. For these reasons, I find the First-tier Tribunal's consideration as to the level of risk the appellant would face upon her return to Somalia is flawed by legal error and I consequently set aside the First-tier Tribunal's determination.
13. I notified the parties of my conclusion at the hearing. Having done so, Mr Masood initially invited me to proceed directly to re-make the decision on the basis of the evidence before me. I observed that it would be of great assistance to be directed to evidence relating to the journey the appellant would have to take from Mogadishu airport to Awdhigley, as well evidence that this journey would reasonable likely take the appellant through areas, or via checkpoints, which are Al Shabaab controlled. Having considered his position Mr Masood accepted that it would be more appropriate for the hearing of the appeal to be adjourned so that up-to-date evidence on these, and other relevant issues, could be obtained. Mr Walker was in agreement with this position. "