



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

Appeal Number: DA/01580/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
on 15<sup>th</sup> December 2014**

**Determination  
Promulgated  
on 20<sup>th</sup> January 2015**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SAID IBRAHIM MOHAMED  
(Anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Tariq Khan instructed by Duncan Lewis & Co Solicitors.  
For the Respondent: Mr Mills –Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. On 14 May 2014 the Upper Tribunal found the First-tier Tribunal panel considering this appeal had materially erred in law in failing to consider a ground of appeal they were specifically requested to do by the Appellant, namely whether he was entitled to a grant of humanitarian protection in this case. All the findings the panel made on the issues they did consider are preserved.

2. The Appellant is a national of Somalia born on 10<sup>th</sup> September 1989. He entered the United Kingdom and claimed asylum in January 2006. That application was rejected but he was granted discretionary leave as a minor valid until 10 September 2007. An appeal against the refusal of the asylum claim was dismissed in July 2006 and an application for reconsideration refused in August 2006.
3. On 5<sup>th</sup> July 2007 the Appellant was convicted of two counts of robbery and one count of attempted robbery and sentenced to twelve months detention. On 29<sup>th</sup> October 2007 the Secretary of State made a decision to deport him to Somalia. An appeal against that decision was dismissed on asylum, humanitarian protection and human rights grounds and under the Immigration Rules. Reconsideration of the First-tier Tribunal decision was ordered and the hearing to establish whether an error of law had been made came before Senior Immigration Judge Martin on 12<sup>th</sup> September 2008, who found that the FTT panel had materially erred in failing to make it clear findings as to whether or not the Appellant spoke fluent Somali which was said to be material to the question of risk on return.
4. Judge Martin substituted a decision finding that the Appellant does speak Somali. Other grounds relied upon before her were discussed in the body of the determination leading to the following conclusions in paragraphs 22 and 23 that:
  22. The grounds completely failed to take into account that the panel has found that the appellant had family in Somalia. He had spent virtually all of his life with them there. He had it found, built up a family life with his aunt but that any interference with that was not of such gravity as to engage article 8. This is against a background of the appellant having his close and immediate family in Somalia. The grounds seem to be arguing that because someone has established a family life then it must always engage article 8. Whilst AG indicates that the threshold to engage article 8 is not particularly high there is nevertheless a threshold. The panel decided in this case the appellant did not meet it and on the basis of the rest of its findings that is something it was entitled to do. In any event the panel did go on to consider the question of proportionality at paragraph 76 of the determination.
  23. As a whole, I find no merit in the grounds save for the one aspect of the failure to make a proper finding as to the Appellant's linguistic abilities. I have made a finding on that point. Given that I have found the Appellant speaks perfectly adequate Somali and that the remainder of the grounds disclose no material errors of law then I substitute my decision on the basis of the panel's sustainable findings that the Appellant is a young, healthy man with a serious criminal conviction, a risk of reoffending; who is not a member of a minority clan and who has immediate family members in Somalia dismissing the appeal.

5. It is further recorded in the determination of First-tier Tribunal Judge Nixon and Ms V Street, promulgated on 6 November 2013, that being the determination in respect of which the material error was found on 14<sup>th</sup> May 2014, that on 29 October 2007 the appellant was served with a decision to make a deportation order. He was granted bail with reporting conditions on 4<sup>th</sup> February 2008 although it is said he failed to report on three occasions. On 26 June 2008 he was sentenced to 49 days detention for taking a vehicle without consent. His High Court review application against the dismissal of his earlier appeal having itself been refused/dismissed, the Appellant was served with the deportation order on 28 October 2008. Removal directions set for 4<sup>th</sup> March 2009 were cancelled on 3 March 2009 as the Appellant had made a Rule 39 application. The Appellant was granted bail on the 3 September 2009 but failed to report as a result of which, on 7<sup>th</sup> May 2010, he was recorded as an absconder. On 31 October 2011 the Appellant was sentenced to 12 months imprisonment for burglary and theft.
6. On 22 July 2013 the Secretary of State made a fresh decision following further representations seeking the revocation of the deportation order served on 28 October 2008. It is the appeal against this decision which came before the First-tier Panel chaired by Judge Nixon. The Panel's findings can be summarised as follows:
  - i. It has previously been found that the Appellant had not shown he was a member of the minority Ashraf Clan. Professor Aquilar's conclusions on the issue were not found to be persuasive enough to warrant departing from previous findings. It appears the Appellants account was accepted without question whereas the Appellant was previous found to have given inconsistent and incredible evidence.
  - ii. The Appellant has failed to show that he is of a minority clan. The Panel had heard and seen nothing which would give them cause to depart from the findings that he has family members in Somalia.
  - iii. The Appellant claims once again to be at real risk of being forcibly recruited by Al Shabaab if returned to Somalia which has previously been found not to be the case by the Tribunal.
  - iv. Professor Aquilar's report states the Appellant faces a real risk because he is westernised with an imperfect command of the Somali language and because he comes from a minority clan but without objective support, this was not found sufficient to depart from the previous findings the Tribunal, especially in light of the fact the Tribunal did not find the Appellant is from a minority clan.

- v. It is unclear where the Appellant comes from in Somalia but for the purposes of the appeal the Panel considered Mogadishu either as his home area or in any event a place for internal relocation.
- vi. The Panel find the Appellant has failed to show he has no family or other support in Mogadishu where his father is from and he is fit for work. Whilst it is accepted that property is expensive the Panel found no reason why the appellant could not find employment in order to find accommodation if his family members have no room. The Panel therefore found the Appellant failed to show that he is at real risk of harm.
- vii. The Panel considered the merits of the article 8 claim and having conducted to the required balancing exercise found the decision of the Secretary of State proportionate.

## **Discussion**

- 7. The hearing of this matter was delayed as a result of the pending publication of the Upper Tribunal's country guidance case relating to Somalia, now promulgated with reference MOJ [2014] UKUT 442. There are a number of previous cases that may in part remain relevant when considering Somalia including AMM [2011] UKUT 445 and Sufi & Elemi 8319/07, 11499/07 of June 2011 which considered the situation in areas of the country under the control of Al-Shabaab, although they are now somewhat dated in light of recent developments in Somalia.
- 8. The Tribunal is also aware of the decision of the European Court in KAB (Sweden) 886/11. In KAB it was held that, whilst the human rights and security situation in Mogadishu was serious and fragile, the available information as at September 2013 did not indicate that the situation at present placed anyone present in the city at a real risk of treatment contrary to Article 3. It was held that Al Shabaab attacks were directed against specific groups rather than deliberately targeting civilians.
- 9. MOJ is the current relevant country guidance case for the purposes of determining the issues at large in this appeal which is an extremely comprehensive determination in which it was found:

### **In MOJ& Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC):**

- (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:
  - (a) circumstances in Mogadishu before departure;
  - (b) length of absence from Mogadishu;
  - (c) family or clan associations to call upon in Mogadishu;
  - (d) access to financial resources;
  - (e) prospects of securing a livelihood, whether that be employment or self employment;
  - (f) availability of remittances from abroad;
  - (g) means of support during the time spent in the United Kingdom;

- (h) 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.

10. The Appellants claim has been considered by reference to Paragraphs 339I to 339M of the Immigration Rules. 339L establishes the duty upon a person to substantiate their asylum claim or establish that they are a person eligible for humanitarian protection or to substantiate his human rights claim

11. In relation to humanitarian protection claims, paragraph 339C of the Immigration Rules states:

“A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;

- (iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
- (iv) he is not excluded from a grant of humanitarian protection.

Serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

12. The Appellant is currently in the United Kingdom and satisfies the requirement of paragraph 339C (i). His asylum claim has been refused and he is not entitled to be recognised as refugee and therefore meets the requirements of 339C (ii).
13. In relation to the risk of serious harm, as per MOJ: 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.
14. The Appellant's case is that he will face such a risk and refers in his bundle to a number of news articles reporting attacks on tax collectors in October 2014, an attack on Somalia's Intelligence Headquarters in August 2014 together with car bombs exploding in Mogadishu. It was recognised in the early authorities that certain groups within Somalia may be at greater risk; which includes those employed by the government collecting income tax or working in the intelligence headquarters, but neither applies to the Appellant. The information provided by the Appellant when coupled with the other generally available country material provides no basis for this tribunal to depart from the country guidance findings. No risk of harm has been established solely as a result of the Appellant being present within Mogadishu at this time.
15. It is further submitted on the Appellant's behalf that it is necessary to carefully consider his own personal circumstances and ability to



return to Mogadishu. It is argued he will be unable to re-establish himself in Mogadishu as he was born there in 1989 but moved elsewhere when he was three years of age has been absent at 22 years. He claims to have lost contact with his family in Somalia and to have contacted the Red Cross in order to ascertain whether his family could be traced.

16. The Appellant submits he has not lived in Mogadishu since the age of three and has no recollection of the city or connections there, no family or clan ties to call upon and no capital or other resources. He also claims he does not speak clear Somali and that English is his first language which will hinder his prospects of securing any type of livelihood and that he will be excluded from employment as he is not a member of the largest clan group in Mogadishu.
17. The Appellant claims that he left Somalia with the assistance of his clan group who arranged for him to travel with an agent which he claims to be "fortuitous" and he that he could not reasonably expect such support would continue to avail itself after nine years absence.
18. The points the Appellant advances in support of his claim have been considered in light of the previous findings of the First-tier Tribunal and the country guidance case law. The Appellant maintained previously that he has insufficient language skills but this matter was disposed of by Senior Immigration Judge Martin who found he speaks Somali and that no risk arose from his language abilities. Attempting to repeat such a claim in the absence of up-to-date supporting evidence is disingenuous. Returning from the United Kingdom does not place the Appellant at credible real risk. It was found Mogadishu is the point of return or relocation and that the Appellant has family in Somalia. The Appellant's claim regarding his clan membership has been found to lack credibility on more than one occasion. He claimed to be a member of the minority Ashraf clan and claims his journey from Mogadishu to the United Kingdom with the help of an agent was paid for by this clan group. This lacks plausibility in light of the fact the Ashraf clan were targeted and their material wealth taken from them by the dominant clans. If the Appellant was a member of a clan group with resources sufficient to have assisted him previously, the country information does not suggest that it would have been the Ashraf. In any event, it has been found the Appellant is not a member of a minority clan group and his assertions to the contrary have been found to lack credibility inferring that the Appellant must therefore be a member of a majority clan. In MOJ it was found that "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". The Appellant has not substantiated his claim that he will

not be able to contact family members on return or receive support from his clan. Even if re-integration is a process that takes time the Appellant has not substantiated a claim he will not be able to make contact with his clan in Mogadishu. The clan structure in Somalia underpins society and is of great importance and the evidence before the tribunal shows that such connections will provide social support mechanisms and assist with access to livelihoods; indicating assistance being available to the Appellant to enable him to establish himself.

19. The Appellant has had the benefit of an education received in the United Kingdom and has not substantiated his claim that he will not be able to obtain some form of paid employment as was previously found. It is accepted the Appellant may find it difficult and may experience periods of hardship but it has not been shown that the impact/consequences of his removal to Somali will be such that he will suffer serious harm or a real risk of the same sufficient to engage the United Kingdom's obligations under any international convention.
20. The Appellant states he contacted the Red Cross in an attempt to trace his family a few weeks after he came to the United Kingdom, which would have been in 2006, but no details have been provided of a concerted effort to try and locate them since, even when he knew he was the subject deportation order, and it has not been shown that facilities that may assist are not available to him in Mogadishu on return.
21. Having considered all relevant factors, I do not find the Appellant has substantiated his claimed to be entitled to a grant of humanitarian protection. He has not established that he is able to satisfy paragraph 399C (iii).

## **Decision**

22. **The First-tier Tribunal Panel materially erred in law. I set aside their decision. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

23. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....  
Upper Tribunal Judge Hanson

Dated the 19<sup>th</sup> January 2015