Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/04935/2015**

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision & Reasons Promulgated**
On 1 September 2017	**On 11 September 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MOHAMED ABDULLAHI ABDALLE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holt, instructed by Sutovic Hartigan, Solicitors
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mohamed Abdullahi Abdalle, was born on 1 January 1978 and is a citizen of Somalia. He entered the United Kingdom in February 2014. By a decision dated 6 March 2015, the respondent refused the appellant's application for asylum and made directions to remove him under paragraphs 8-10 of Schedule 2 of the Immigration Act 1971. First-tier Tribunal (Judge O'Flynn) in a decision promulgated on 19 January 2017 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are three grounds of appeal. First, the decision of the First-tier Tribunal is challenged on the basis that the judge failed to understand the

evidence. At the core of the appellant's claim for asylum was his assertion that he had been approached by Al Shabaab in Mogadishu, Somalia and that the organisation had wanted the appellant to help them recruit others to its cause. The appellant had relied upon an expert report (Miss Harper) which indicates that, although Al Shabaab was unable to engage in systematic large-scale recruitment, it needed to enlist the help of others. Miss Harper quotes a Danish Immigration Service report: "the UN official saying that although Al Shabaab probably no longer recruits systematically in Mogadishu it might employ people to carry out certain activities on its behalf." Judge O'Flynn, however, relying upon the country guidance of *MOJ* [2014] UKUT 00442 (IAC) found at [39] that

> the difficulty for the appellant in this case is that the country guidance case of *MOJ* suggests that Al Shabaab does not engage in forced recruitment in Mogadishu at the time the appellant claims he was threatened by them (2013/2014). It is clear from the case that there may be arbitrary attacks in public places and what I have to consider here is Al Shabaab's activity in forcing the appellant to recruit on their behalf or be threatened with death.

3. The judge refers to the relevant country guidance of *MOJ & Ors* (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC). I note that the Tribunal in *MOJ* considered forced recruitment at [395-396]:

> 395. It is entirely clear from the evidence that there is no real risk of forced recruitment to Al Shabaab, despite the opinion to the contrary expressed by the expert witnesses. We have set out above a range of well-informed views, given by respected observers present on the ground in Mogadishu, that contradicts that opinion, including the following, taken from the Danish 2 report:
>
> "The local NGO (C) had no reports of forced recruits to al-Shabaab in the city of Mogadishu..."
>
> "When asked... an international NGO working in SC Somalia (D) stated that it had not heard about this..."
>
> "The NGO reiterated that it did not believe that al-Shabaab is able to undertake forced recruitment in Mogadishu..."
>
> "Saferworld found it unlikely that al-Shabaab undertakes forced recruitment today"
>
> "Regarding forced recruitment to al-Shabaab in Mogadishu an international NGO working in S/C Somalia (C) stated that al-Shabaab does not have the leverage to undertake forced recruitment today... and the NGO was confident that al-Shabaab is incapable of recruiting in Mogadishu.

> 396. Mr Toal advances an ingenious argument the thrust of which is that, even if there is no risk of forced recruitment, if a person has no resources, no access to a livelihood and is facing destitution, he may be driven to accept money from Al Shabaab to carry out tasks for them but, in recruiting him on this basis, Al Shabaab would be abusing his vulnerability such that it would amount to trafficking, such as to infringe Article 4 of the Convention against Trafficking. We do not exclude that argument as being sustainable in certain individual circumstances, but it is certainly not made out in relation to civilian returnees in general and whether it is applicable in the case of SSM will depend upon an assessment of his circumstances and whether he established that level of vulnerability. In any event, where it is established that a returnee would in fact find himself living in conditions of destitution, he would look to the protection of Article 3 of the ECHR.

4. The judge also noted that the Tribunal in *MOJ* had found that a durable change had occurred and that Al Shabaab had withdrawn from Mogadishu "completely" and there was "no real prospect of a re-established presence [of Al Shabaab] within the city." At [43] the judge went on to find that,

> having found that the appellant's account was not consistent with the country guidance on Somalia, then the appellant's 'story' is not credible with regard to threats from Al Shabaab. This is the key reason why I find his story is not believable.

The judge then proceeded to assess the case, including risk on return, on the basis the appellant had given an untruthful account of past events.

5. The first ground of appeal challenges the judge's analysis on the basis that the appellant had not claimed that he had been forcibly recruited by Al Shabaab or forcibly attempted to recruit him as described by the Tribunal in *MOJ*. Rather,

> It is the appellant's case that Al Shabaab wanted the appellant to help to recruit people to their cause. He guesses that Al Shabaab thought he would be a good person to spread their word because his tea shop was busy and he was friendly and good with people. In addition it is the appellant's account that after he rejected that offer to recruit on their behalf Al Shabaab ordered them to stop selling to government forces and it was at this point that the threats began.

6. I find that the ground of appeal has no merit. The Upper Tribunal's analysis of forced recruitment by Al Shabaab at [395] (see [3] above) makes no distinction whatever between forcible recruitment to the ranks of Al Shabaab and persuasion of individuals to recruit on behalf of Al Shabaab. The point made by the Tribunal is that Al Shabaab's influence in Mogadishu had, since the time of the previous country guidance of *AMM*, collapsed and that there was "no real prospect of re-established presence within the city." That is a finding which I consider is comprehensive enough to include forcible recruitment and the recruitment by proxy which the appellant describes in his account. I am also not persuaded at all that the judge misunderstood the nature of the appellant's case. At [21], the judge recorded that, in answer to questions which he had asked the appellant at the hearing, "[the appellant] explained that at first they asked him to join them *and be their agent* but when he refused it was then they

told him not to sell goods to the soldiers." [My emphasis]. It is clear from this paragraph that the judge was aware that the appellant had claimed that Al Shabaab had approached him to act "as their agent". Further, I am satisfied that the form of approach by Al Shabaab described by the appellant which he said he had encountered in Mogadishu falls within the definition of forced recruitment. When the appellant refused to co-operate with Al Shabaab and to use his influence to recruit others on behalf of the organisation, he claims that he was threatened with violence. The recruitment was, therefore, forced in that, the appellant had no alternative but to comply if he wished to avoid the threat of violence. I am satisfied that the ground of appeal amounts to no more than an attempt to establish a false distinction between an activity which the country guidance clearly indicates had ceased in Mogadishu and what the appellant claimed to have experienced in that city.

7. The second ground of appeal concerns the judge's finding that he did not accept that the appellant's family members in Somalia were in hiding as the appellant had claimed. The judge also found that the he had family members in Somalia and that he could "make attempts to find his family."

8. I find that this ground has no merit. Having found that the appellant was not a credible witness, the judge was entitled to reject the appellant's claim if his family members were in hiding. Indeed, it was open to the judge to find that nothing that the appellant had said about his family members in Somalia was reliable and in those circumstances, the judge's finding that the appellant could employ the assistance of extended family members to find members of his close family that was open to him.

9. The third ground of appeal concerns an alleged procedural irregularity. The appellant and his wife live in Manchester. The appeal took place at Hatton Cross, in west London. The representative of the appellant at the First-tier Tribunal hearing had applied for an adjournment so the matter may be transferred to Manchester so that the wife could attend to give oral evidence. The grounds of appeal assert that "the appellant's wife's evidence was clearly relevant to the appellant's family life in the UK." Considering the appeal on Article 8 ECHR grounds at [58], the First-tier Tribunal Judge took the view that there would be "little to be added by [the appellant's wife] giving oral evidence." The grounds complain that in the same paragraph the judge identified a lack of evidence regarding the appellant's relationship with his wife's children (his step-children).

10. I find this ground of appeal has no merit. At [58] the judge, as I have recorded above, noted that little would be added by the wife giving oral evidence. The judge was entitled to take into account when considering the adjournment application that the hearing had been listed for some six months in advance. Secondly, it was accepted that the appellant and his wife were in a genuine relationship; there was no need for her to give oral evidence concerning her relationship with the appellant. Thirdly, it was not possible for the appellant to meet the requirements of the Immigration Rules (there was no evidence of proficiency in English and the financial requirements were not met). The judge noted accurately that the children

were not the appellant's children and that there was no evidence "which could have been put in Ms Mohamed's [the wife's] statement that there is any particular bond between the appellant and Ms Mohamed's children." It is this last statement which defeats the third ground of appeal. Judge O'Flynn was entirely correct to observe that the statement of Ms Mohamed dated 5 January 2017 contains no reference whatsoever to the appellant's claimed relationship with her children. The statement deals with the family finances and records the fact that Ms Mohamed had met the appellant in early 2016 and had lived with him since August 2016. As Mr Bates submitted, it had been open to the appellant's wife to provide a supplementary statement addressing any relationship between her children and the appellant but she had chosen not to do so. She had chosen not to do so fully aware of the difficulties which she claimed would prevent her attending the appeal hearing at Hatton Cross to give oral evidence. I am aware that the Presenting Officer before the First-tier Tribunal had not objected to the adjournment and, as the judge records, may have "had some questions for the wife" but I do not find that that undermines the legitimacy of the judge's decision to refuse the adjournment. Evidence-in-chief led in the First-tier Tribunal should be provided in full and detailed written statements; an appellant cannot rely upon the respondent's cross-examination to bring before the Tribunal evidence which the appellant may consider relevant to the appeal. In any event, the Presenting Officer's "questions for the wife" may not have included any questions regarding the appellant's relationship with the children. I fully agree with Judge O'Flynn's conclusion that nothing would have been gained by adjourning the hearing to enable the wife to give oral evidence. The appellant has not suffered any injustice by the failure to adjourn the hearing; if he wished to lead evidence regarding his relationship with Ms Mohamed's children then he should have done so and his failure is entirely the fault of himself and his representatives. Even at this stage in the proceedings, no evidence has been put before the Tribunal under Rule 15 which might suggest that the relationship between the appellant and children whom he has only known since last year is so strong that his appeal should be allowed on Article 8 grounds.

11. For the reasons I have given, this appeal is dismissed.

Notice of Decision

12. This appeal is dismissed.

13. No anonymity direction is made.

Signed Date

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date

Upper Tribunal Judge Clive Lane