



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

Appeal no: **RP/00031/2015**

**THE IMMIGRATION ACTS**

At **Field House**  
on **23.05.2017**

Decision signed: **23.05.2017**  
sent out: **24.05.2017**

Before:

The Hon. Mr Justice **NICOL** and  
Upper Tribunal Judge John **FREEMAN**

Between:

**Ahmed Abashek MUDHIR**

appellant

and

**Secretary of State for the Home Department**

respondent

**DECISION AND REASONS**

This is an appeal, by the respondent to the original appeal against the decision of the First-tier Tribunal (Judge Peter levins), sitting at Taylor House on 2 December 2015, to dismiss an appeal by a citizen of Somalia, born 1983. The appellant's appeal had been against an order for his automatic deportation as a foreign criminal, following sentences of 9 years' imprisonment in all for firearms offences in 2011. The appellant had come here in 1993 with his half-brother, and been granted asylum as his dependant. Judge levins had allowed the appeal on asylum and human rights grounds; but the respondent had certified the asylum claim under s. 72 of the Nationality, Immigration and Asylum Act 2002.

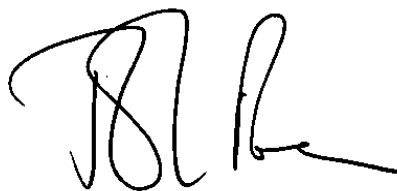
2. Following the grant of permission, the s. 72 certificate was the only aspect of this case to have been dealt with by the Upper Tribunal (May J and Upper Tribunal Judge Jeremy Rintoul), who found, following a hearing on 19 July 2016, that the appellant had not rebutted the presumption set out in s. 72 (2), which brought in article 33 (2) of the Refugee Convention. That meant that he could not claim the protection of that Convention; but the question still remained as to whether he could be deported to Somalia without a real risk of 'inhuman or degrading treatment' contrary to article 3 of the European Human Rights Convention.

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.*

*(2) persons under 18 are referred to by initials, and must not be further identified.*

- 3.** This issue was listed for hearing on 24 – 25 May before us; but, during the few days before the hearing, it turned out that the appellant had been sentenced to a further period of 22 years’ imprisonment on 12 May for more firearms offences. We asked the parties whether there was any purpose to be served by the appeal continuing, bearing in mind that the appellant could not be removed till he had served the custodial period of that sentence. The result, on the morning of the 22<sup>nd</sup>, was an e-mail from the presenting officer in charge of the case (Mr Ian Jarvis), saying that the decision under appeal, to deport the appellant, had been withdrawn in the light of the recent sentence.
- 4.** Mr Jarvis helpfully referred us to r. 17 (1) (a) of the Upper Tribunal Procedure Rules, and to *SM* (withdrawal of appealed decision: effect) (Pakistan) [2014] UKUT 64 (IAC). The relevant part of r. 17 follows: since it is now (as in force from 21 August 2015) in rather different terms from those considered in *SM*, it will be enough for us to set these out.
- 17.** (1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—  
(a) by sending or delivering to the Upper Tribunal a written notice of withdrawal; or  
(b) orally at a hearing.  
(2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.
- 5.** We sought the appellant’s views and were told that he consented to the withdrawal. In the circumstances already mentioned, both parties have sensibly recognized that no useful purpose is served by this appeal continuing. We accept Mr Jarvis’s e-mail as written notice of withdrawal of the decision under appeal, and have no hesitation in consenting to that. The result will be that this appellant remains liable to serve the custodial period of his sentence. If a fresh decision is made to deport him when that nears its end, then its merits, including those of any s. 72 certificate, will need to be considered on the basis of the relevant circumstances as they are then.

**Decision under appeal withdrawn**



(a judge of the Upper  
Tribunal)