Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00068/2017

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice	**Decision & Reasons Promulgated**
On 27 November 2017	**On 23 March 2018**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[A A]
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Respondent

Representation:
For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr A Slatter, Counsel

DECISION AND REASONS

1. Although the appellant in his proceedings is the Secretary of State, I continue to refer to the parties as they were before the First-tier Tribunal ("FtT").

2. The appellant is a citizen of Somalia, born in 1988. He arrived in the UK on 7 June 2005 and was granted asylum in the same month. He was further granted indefinite leave to remain ("ILR") on 27 November 2011.

3. On 26 April 2016 in the Crown Court at Isleworth the appellant was convicted of offences of assault occasioning actual bodily harm and common assault. He received a sentence of 16 months' imprisonment for the assault occasioning actual bodily harm and two months' imprisonment consecutive for the common assault. As a result of those convictions the respondent wrote to the appellant notifying him of her intention to revoke his refugee status. Thereafter, in a decision dated 12 May 2017, she decided to refuse a protection and human rights claim, effectively being a decision to make a deportation order against him under the UK Borders Act 2007.

4. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Mitchell ("the FtJ") on 14 August 2017. The FtJ allowed the appeal against the decisions to cease the appellant's refugee status and consequently the decision to refuse the human rights claim.

5. The respondent challenges the FtJ's decision on a number of bases. It is argued in the grounds that the FtJ had failed to make any findings on the evidence of the appellant, and thus the respondent cannot know whether or not the appellant's evidence was accepted.

6. It is further argued that with reference to *MOJ & Ors (Return to Mogadishu)* Somalia CG [2014] UKUT 00442 (IAC), the FtJ was wrong to conclude that the appellant could not now be returned to Somalia. Furthermore, it is argued that the FtJ failed properly to consider the question of conditions on return in the light of the appellant's particular circumstances.

7. In addition, it is contended that the FtJ had not considered the returns package available to the appellant on return, and was in error in concluding that such a package would not be available to the appellant because he would not be returning voluntarily.

8. It is additionally argued that the FtJ was wrong to conclude that the situation in Mogadishu does not indicate a sufficient and durable change.

9. There is in this appeal an issue of principle in terms of whether the respondent is entitled to rely on a change in circumstances in a particular part of the country in order to invoke paragraph 339A(v) and Article 1C(5) to cease a person's refugee status. However, it was accepted by the parties that if the FtJ was correct in his other conclusions, that it to say that the change of circumstances in Mogadishu was not such as to bring into play the cessation of the appellant's refugee status, then the issue of principle to which I have referred does not need to be decided.

Submissions

10. Mr Wilding relied on the written grounds. It was contended that it was not clear what was decided in terms of the appellant's evidence. Further, the FtJ had not made a finding on the facilitated returns package. Additionally,

it was not clear why the FtJ said at [37] that the appellant has no relatives living in Mogadishu, or no access to funds or remittances.

11. Similarly, although the FtJ said in the same paragraph that the appellant has no obvious skills, he speaks English and has worked in a kitchen. It is clear from *MOJ & Ors* that clan affiliation is different now.

12. If it is the appellant's case that there is not a significant change in Mogadishu, the burden shifts to the appellant to establish that fact, or that the situation has changed for the worse. It was submitted that the FtJ may have had in mind the decision in *AMM and others (conflict; humanitarian crisis; returnees; FGM)* Somalia CG [2011] UKUT 445 (IAC) in concluding that there was no durable change. This appellant is not from Mogadishu and the Secretary of State relies on *MOJ & Others* to demonstrate that there is such a change in Mogadishu and that it would be reasonable for the appellant to live there. It was *AMM and others* that decided that as of August 2011 the change in Mogadishu was not sufficiently durable. However, *MOJ & Ors* took into account evidence three and a half years after the decision in *AMM and others*. Although it was true that some individuals may not be covered by the decision in *MOJ & Ors*, the FtJ's consideration of this issue was erroneous.

13. It was further said in *MOJ & Ors* that it was for the person facing return to explain why they would not be able to have access to the economic opportunities afforded in Mogadishu now. It was however accepted that it was for the Secretary of State to establish that the circumstances had changed.

14. In submissions, Mr Slatter argued that the factual findings made by the FtJ are largely uncontentious and were findings that were open to him. It was plain that the FtJ did consider *MOJ & Ors*, for example at [36] and [37] of his decision. He also considered the Country Policy and Information Note ("CPIN") on Somalia version 2.0 dated June 2017 which he set out at [39]. He had before him the appellant's witness statement, and he made findings at [40]. It was submitted that the facts underpinning the appellant's case were not disputed, save to a limited extent in the respondent's decision dated 12 May 2016 on page 5 (there are no paragraph numbers) in terms of his being able to obtain support from relatives in the UK. However, this was a matter that the FtJ considered at [34], referring to the relatives that he has in the UK and the limited assistance that they have previously provided for him. He concluded that there was no evidence that they had ever provided him with financial assistance or would be willing to do so in the future, either in the UK or in Mogadishu.

15. Furthermore, at [40] the FtJ pointed out that there was no "real dispute" about the contention that he has no relatives in Mogadishu.

16. As to any assistance he might be able to expect from his minority clan, at [342]-[343] of *MOJ & Ors* it was said that assistance from clan membership should not be overstated.

17. It was finally submitted that for this appellant the changes in Mogadishu have not been significant.

18. In reply, Mr Wilding contended that the submissions on behalf of the appellant rely solely on [37] of the FtJ's decision. Those submissions simply gloss over the questions that need to be asked, as illustrated by the FtJ's quotations at [38] and [39] from *MOJ & Ors* and the CPIN.

19. Although the FtJ had said at [40] that the appellant's asylum claim was based primarily on not having any family in Somalia, that was not a basis for a grant of asylum. The FtJ's decision failed to take into account the economic boom and the huge amount of inward investment in Mogadishu, as set out at [345] of *MOJ & Ors*. In that case the Tribunal concluded that it was not just the wealthy elite that benefited from the investment.

Conclusions

20. Article 1C(5) of the 1941 Convention provides one of the conditions under which a refugee ceases to be a refugee. Article 1C provides that:

> "This Convention shall cease to apply to any person falling under the terms of section A if:
>
> …
>
> (5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality …".

21. This mirrors the terms of paragraph 339A of the Immigration Rules which at 339A(v) contain an identical provision.

22. Council Directive 2004/83/EC ("the Qualification Directive") at Article 11, sub-paragraph (e) is again in identical terms.

23. Both the Rules and the Qualification Directive contain the identical provision that the Secretary of State (or member state) "shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded".

24. Paragraph 135 of the UNHCR Handbook explains that the circumstances referred to in Article 1C(5) refer to "fundamental changes in the country", but a mere, possibly transitory, change in the facts surrounding the individual's fear which does not entail "such major change of circumstances" is not sufficient to make Article 1C(5) applicable. It makes the point that a person's refugee status should not in principle be subject

to frequent review to the detriment of his sense of security, which international protection is intended to provide.

25. The respondent's Asylum Policy Instruction on the revocation of refugee status, version 4.0 dated 19 January 2016 at Section 4.5, emphasises the point that the changes must be significant and non-temporary.

26. Now, it is true that in *MOJ & Ors* a change in the situation in Mogadishu is identified and described in detail. However, it is important to recognise that *MOJ & Ors* was not a case on cessation of refugee status. The guidance that it gives does refer to a "durable change" but it seems to me to be clear that the Tribunal was not intending to provide any steer in terms of whether or not the situation in Mogadishu was such as to bring into play Article 1C(5) or its domestic equivalent in terms of the Rules at 339A(v). The Tribunal in *MOJ & Ors* refers to a "durable change" but is careful to qualify that phrase in the remainder of the sentence of that guidance beginning "in the sense that the Al Shabaab withdrawal from Mogadishu is complete" etc.

27. In this case, the FtJ noted at [29] that it was accepted by the respondent that the appellant could not return to his home area (of Qoryooley) and that the respondent's position was that the appellant could return to Mogadishu notwithstanding his minority clan status.

28. The FtJ gave an extensive summary of the evidence indicating that, putting aside the question of Mogadishu for the moment, the general security situation in southern and central Somalia remains volatile. He concluded, and was entitled to conclude on the evidence before him, that the situation in Somalia as a whole was unstable.

29. With specific reference to Mogadishu, and the security situation there, the FtJ referred to various aspects of *MOJ & Ors* and the prospects for its being a viable place of return for this appellant. He referred to the CPIN dated June 2017, quoting paragraphs 2.3.6 to 2.3.12 which itself summarises aspects of *MOJ & Ors*.

30. At [43] the FtJ referred to the UNHCR's materials which indicate that violence is continuing on a regular basis indiscriminately in large parts of Somalia but including Mogadishu and in the outskirts where the IDP camps are located. For example, the UNHCR letter dated 9 January 2017 refers to the Home Office Country Information and Guidance Report dated 15 March 2016 which, the UNCR letter states, "highlights the precarious security situation in Mogadishu".

31. The FtJ recognised at [44] that there had been a significant change in Mogadishu, but concluded that it had not always been for the better.

32. Considerations of internal relocation and cessation of refugee status are not the same. Apart from anything else, in cessation cases the burden of

proof is on the respondent to establish that the necessary conditions for cessation exist.

33. Furthermore, it does seem to me that the FtJ was justified in concluding that neither the background evidence nor the decision in *MOJ & Ors* indicated that the changes in Mogadishu are "significant and non-temporary". One only has to consider what was said in *MOJ & Ors* about the position of persons in IDP camps, for example at [411]. In case there is any doubt that consideration of IDP camps comes within the exploration of the availability of return to Mogadishu, at [411] the Tribunal referred to Mogadishu's IDP camps (as well as tents or makeshift shelters). It is not the case therefore, that it was decided in *MOJ & Ors* that there was such a wholesale change in circumstances that anyone could be returned to Mogadishu. That is plainly not the case.

34. As to what could be called the more fact-specific complaints about the FtJ's assessment of the appellant's circumstances, it is plain that the FtJ was well aware of the considerations that needed to be taken into account in assessing the viability of the appellant's return to Mogadishu, although it seems to me that it is not strictly necessary for me to explore this further given the FtJ's sustainable conclusion that the situation in Mogadishu is not such as would bring into play the cessation clauses. However, for completeness, I am not satisfied that there is any error of law in the FtJ's assessment of the appellant's circumstances and the viability of his return.

35. The facts were barely in dispute. The FtJ accepted that the appellant has no relatives in Mogadishu, and that he would not be in receipt of remittances from relatives in the UK. He was entitled to come to those conclusions on the basis of the evidence before him. He noted that the relatives in the UK in fact did not attend the hearing or provide any letters of support for the appellant. He concluded that the appellant would not appear to have any form of social network and does not have access to funds. Whilst it could be said that the appellant's prospects for employment were not quite as bleak as the FtJ suggested, the FtJ was entitled to point out that the appellant has no obvious skills and that what work he has done in the UK has been limited to working as "a kitchen hand". It is also to be remembered that the appellant is from a minority clan and whilst the significance of clan membership has been found to have changed, it was said in *MOJ & Ors* that the significance of support that could be derived from a minority clan should not be over emphasised. The FtJ referred to relevant paragraphs of *MOJ & Ors*, namely [424]-[425].

36. Whilst it is true that the FtJ, contrary to what was decided in *AN & SS (Tamils – Colombo – risk?)* Sri Lanka CG [2008] UKAIT 00063, decided that the appellant would not have access to any grant from the Home Office on return (as described in *MOJ & Ors*) because he would not be returning voluntarily, I cannot see that that error of itself could have made a material difference to the FtJ's conclusions bearing in mind the other factors he took into account, i.e. lack of connections with Mogadishu, lack

of availability of remittances from the UK and lack of family support there. Whilst it is true that unskilled work does appear to be available in Mogadishu, the FtJ was entitled to conclude that the appellant has no obvious skills that would make him an attractive employment prospect.

37. I am not satisfied therefore, that there is any error of law in the FtJ's assessment of the viability of the appellant's return to Mogadishu and his conclusion that there was a real risk that the appellant would end up in an IDP camp which was found in *MOJ & Ors* to be a situation that fell below acceptable humanitarian standards.

38. I am not satisfied that there is any error of law in the FtJ's decision in any respect.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to allow the appeal therefore stands.

Upper Tribunal Judge Kopieczek dated 21/03/18