



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00085/2017

THE IMMIGRATION ACTS

Heard at Field House
On 15th June 2018

Decision & Reasons Promulgated
On 10th July 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MOHAMMED ALI ARTAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer
For the Respondent: Mr R Claire, Counsel instructed by Linder Myers Solicitors

DECISION AND REASONS

1. The Secretary of State's appeal to the Upper Tribunal was allowed at the error of law stage, and therefore, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Somalia born on 1 December 1985. His appeal against deportation was allowed by First-tier Tribunal Judge Hodgkinson on Article 3 grounds.
2. The Respondent's appeal to the Upper Tribunal was allowed for the reasons given in the decision dated 11 April 2018. The Upper Tribunal concluded:

"28. We set aside the judge's finding that the Appellant had no access to funds and 'he does not have any skills sets of note'. These findings were contrary to the evidence that the Appellant's siblings could provide £100 on occasion,

the Appellant could benefit from resettlement package of £1,500, he had always financially supported himself in the UK; he had been employed in the UK; he speaks English; and he had a part share in a business.”

3. The First-tier Tribunal did not address Article 8 and accordingly the matter was adjourned for rehearing on Article 3 and Article 8 grounds with directions to file and serve any further evidence no later than 14 days before the hearing and both parties to file and serve skeleton arguments no later than 7 days before the hearing.
4. On 14 May 2018, the Respondent served a skeleton argument attaching a witness statement of Anne Brewer confirming that in respect of a forced returnee, where a person has not applied for or has been refused assistance under the Voluntary Returns Scheme, they will receive \$100 on departure to cover their immediate needs. Also attached were responses to information requests and an article entitled “Return of Querky Somali Diasporans”. I grant the application under Rule 15(2A) and permit the admission of these documents.
5. The Appellant failed to comply with directions and did not submit any further evidence. The skeleton argument was submitted on the day of the hearing on 15 June 2018. Prior to this there had been three applications for adjournments and the application was renewed by Mr Claire on 15 June 2018.

Adjournment applications

6. The first application for an adjournment was made on 30 May 2018 on the basis that the Appellant’s mother had gone to Dubai to be with her seriously ill sister and she had booked her ticket on 10 May 2018 and travelled there on 20 May 2018. Further, the applicant’s brother was likely to leave the country prior to the hearing and he too was a crucial witness. The application was refused by the Duty Judge on the basis that the grounds failed to identify why the applicant’s mother and brother were required to give oral evidence.
7. The second application for an adjournment was made on 5 June 2018 on the basis that the Appellant’s mother’s evidence was relevant and probative since she was granted asylum in May 2002 and the Appellant was now her primary carer. The Appellant’s mother and brother attended the First-tier Tribunal and were cross-examined and therefore it was unlikely that their evidence would be agreed by the Respondent. This was refused by the Duty Judge on 6 June 2018 on the grounds that the application failed to show why it was necessary for the Appellant’s mother and brother to give oral evidence. There was nothing preventing either witness from making a further statement and submitting it to the Upper Tribunal. The Appellant had failed to serve any further evidence which should have been submitted by 1 June 2018.
8. The third application for an adjournment was made on 11 June 2018. There was a short email from the Appellant’s solicitor forwarding a message from the Appellant’s ex-partner, A O, in which she states:
“I am writing to inform you that I won’t be able to make the court date. It is too short notice as I have a sick mother who had a stroke a few weeks ago and is in

hospital as we speak. As a carer myself I have to split my time between my mother and my work. I currently have a lot of things on my plate at the moment and 15th June is too short notice for me to attend.”

9. This application was accompanied by evidence that the Appellant’s brother left the UK on 13 June 2018 to travel to Nairobi via Dubai and enclosing the ticket of the Appellant’s mother showing that she left the UK on 20 May 2018 and would return on 17 September 2018. There was also a letter from the Appellant’s brother's employer. The application for the adjournment stated that the Respondent was extremely unlikely to agree the evidence of the Appellant’s mother contained in the witness statements already submitted and that both the Appellant’s mother and brother were essential to the Article 8 issues to be determined. The application was refused by the Duty Judge on 12 June 2018 for the reasons given by the two previous Duty Judges and also on the basis that it would not be in the interests of justice or compatible with the overriding objective given that directions had been given at the error of law stage.
10. Mr Claire renewed his application for an adjournment, the fourth application, on the basis that after reading the Respondent’s skeleton argument, relying on the lack of evidence of funds and savings, the Appellant requested time to provide such evidence since none of the witnesses, namely the Appellant’s brother, sister and mother were able to attend to give evidence relevant to whether they had any savings. I refused the application on the basis that this was documentary evidence which should have been submitted in response to directions. The Appellant had ample notice of the evidence required and considering the overriding objective the case should proceed. It was not appropriate to rely on the oral evidence of the witnesses to provide this evidence.
11. The Appellant has been aware from the promulgation of the error of law decision on 11 April 2018 that his appeal would be reheard on the issue identified at paragraph 28 referred to above and on Article 8. The decision included directions that further evidence should be served fourteen days before the hearing. The Appellant has had ample opportunity to prepare and submit evidence from his mother, brother, sister and ex-partner. He has failed to do so.
12. It does not assist the Appellant to state that the Respondent may wish to challenge such witnesses. In the event, given the content of the Respondent’s skeleton argument, Mr Walker did not seek to cross-examine those witnesses.
13. The notice of hearing was sent on 16 May 2018. Notwithstanding, the Appellant’s mother travelled to Dubai on 20 May 2018 and his brother travelled to Nairobi on 13 June 2018. Although the Appellant’s mother booked her ticket on 10 May 2018, prior to the notice of hearing being sent, it is clear from the decision of 11 April 2018 and the directions given that the Appellant was required to submit any further evidence upon which he relied within fourteen days of the hearing. The Appellant has had ample opportunity to submit any further statements and the fact that his mother and brother have chosen to leave the country did not prevent them from providing evidence in the form of witness statements or submitting bank statements in relation to their financial circumstances.

14. It is disingenuous for the Appellant to claim that oral evidence is needed in order to put forward his claim. The Appellant has not been prevented from submitting the necessary evidence and in fact failed to submit any further evidence in response to the error of law decision. He relied on the previous witness statements and previous evidence before the First-tier Tribunal.
15. In summary, it was in the interests of justice and the overriding objective to continue with the appeal. There has been no unfairness caused to the Appellant in failing to grant an adjournment.

The Appellant's Evidence

16. The Appellant relied on his statement dated 14 July 2017. He stated, in summary, the last time he worked was around late February/March 2016 before he went to prison. He was an employee working for Wholesale Drink Limited. He was not the owner of the business but worked there and he liked to think that he was a shareholder but he was not because the company shut down. He worked there for a year and a half, it was a Polish shop and had been referred to by the First-tier Tribunal. He was again asked if he was a shareholder and he then said, "I was in the last stage. I had to work my way as I had no finances to buy a share". He stated that he did not relinquish his share in 2016 and had not received anything because the company was in debt and everything got taken away. He had not worked since then and had been living off his mum and the food cooked at home. He would do the food shopping and take his mum to appointments. He had no personal income and his friends would help him out from time to time. The Appellant had never returned to Somalia since arriving here at the age of 15 and he had no contact with anybody in Somalia. He had no savings.
17. Mr Claire referred to a bank statement submitted with the Appellant's brother's additional witness statement. It was a current account from the Halifax and was dated 15 September 2017. It showed numerous incomings and outgoings. There were two bank statements from a Nationwide current account dated August 2017 and September 2017. They show ingoings and outgoings and his sister's monthly salary.
18. The Appellant stated that his brother may have some savings because he was in the process of bringing his son to the UK and he would need to have savings to do that. He could not give any of this money to the Appellant because of this and his brother had said he could not provide for the Appellant because he was providing for his wife and child. The Appellant's sister did not have any savings at all, she was in serious debt, she had lost her home which had been repossessed and she was in debt with companies that had lent her money.
19. In relation to the Appellant's ex-partner, A O, the mother of his child, the Appellant stated "I am still married to her, we have not been divorced. Our relationship has had its ups and downs because she is in Hayes in London and I am in Southampton. I am the primary carer for my mother and I have to stay at home every night. I am on immigration bail and have to stay at my mother's address caring for my mother and my ex-partner is in London and I am not able to travel there every day. I can only visit in the holidays." His ex-partner had other children at school and his son would come

and stay with him. The Appellant was unable to stay with the ex-partner because of his bail conditions. He was not in a relationship with his ex-partner but he saw his son every holiday and every other weekend. He had never had any problems with his parents or his ex-partner's parents and he had agreed to take his son and care for him full-time from September this year.

20. The Appellant's mother had her ups and downs and sometimes forgot where she was. She could pass out when walking around and he was unable to leave Southampton because he had to care for her. When he went to London to pick up his son someone would stay with her, for example, the head of the community, Mr Artan who had attended the first hearing and given evidence. The Appellant cooked and cleaned for his mother. His brother lived a ten minute drive away, twenty minutes walk away and had his own life. He was working very hard doing twelve hour shifts a day. His brother barely saw his mother. His sister lived in Nottingham which was a three hour drive away. She too had her own life and she had her debts to sort out. He barely saw her. She was getting married and her future husband had contacted the Appellant to ask him to give her away.
21. In relation to the Appellant's criminality, he stated on paper it does not look very good at all and he cannot blame anybody. He was sorry for hurting his victims and his mother. He had no excuse for what he had done and he knew that saying sorry was not good enough. He was asked why, after being convicted and sentenced to five years for supplying drugs and subsequently receiving a warning about liability to deportation, he then committed the offence of grievous bodily harm in 2015. He stated that he grew up with the wrong people so he cut himself off from the people from his youth and he is a changed man. He explained that in respect of this offence a woman had told him that she had been assaulted by a man and then, having pointed out this man who had thrown a glass at her which had cut her, the Appellant responded by throwing a glass back at him which, unfortunately, made contact and hit him. He had pleaded guilty on the advice of his solicitor because he was not injured in the encounter but he had injured the other man. He said that his solicitor told him if he pleaded guilty he would not be imprisoned.
22. When asked what would happen on return to Somalia the Appellant stated: "I think I will die, I will get killed. All the stories I have been hearing and what I have been reading, it is not a nice thing. Al-Shabaab are targeting westernised people and I know this will happen to me as my dad and brother were killed there. It is a scary thing to think about." He said he had no idea where he would live and the language made it a bit difficult. He felt that he was westernised and had a lot of tattoos. He had no family in Mogadishu and did not know anybody. His mother's brother, wife and children were killed. He had not seen his son today and was hoping to pick him up and have him for the weekend. He did not want to have his child taken away from him. He was very close to him and his son was now talking and wanted to know everything for him. They played football together. Unfortunately, the Appellant had to choose to look after his sick mother and he had to stay with her. His ex-partner was understanding and knew that he was a good father. She had two other children and he was also a father to them. He did not have the benefit of contact with his father and therefore he wanted to give that to his son.

23. In cross-examination, the Appellant stated that his mother was in Dubai at the moment. He could not remember the date that she left but she had been gone a couple of weeks. She left at the beginning of Ramadan. Her sister in Dubai was very poorly and she was in her last days. His mother travelled with her other sister from Southall and her sister's son and they were meeting another family relative when they arrived in Dubai. His mother had been able to travel with help. He had taken her to the airport. She was in a wheelchair and he took her to security and explained her medication to the security people. His mother had travelled with her sister. She did not receive any social services care in Southampton. His brother had gone to Nairobi and had left on the 13 June 2018. His mother did not have any savings and she had been able to pay for the flight to Dubai from her benefit which had been cut off previously but that decision had been challenged in court and had been successful. Her money was therefore reinstated and she had used it to travel to Dubai. She also got help from the local Somali community. The Somali community would not help the Appellant by sending him money because he would be dead before they could do so. They also had their own lives to live in the UK and would not support him. When he was in prison his son had been looked after by his ex-partner, the child's mother. His son was born in August 2013 not whilst he was in prison.

The Respondent's Submissions

24. Mr Walker relied on the refusal letter and the skeleton argument submitted by Mr Jarvis dated 3 May 2018. He referred to the preserved findings set out at paragraph 5. The main thrust of the Respondent's challenge to the First-tier Tribunal decision was that the Appellant had failed to explain why he would not be able to access the economic opportunities that had been produced by the economic boom and that he had failed to demonstrate that he did not have a genuine prospect of securing a livelihood. The skeleton argument made it clear that the Respondent takes issue with the Appellant's claim to have no other source of support. The burden was on the Appellant to provide corroboratory evidence that he does not have any cash or savings available from his own work or business and that his brother and sister do not have any savings with which they could support him either permanently or temporarily, or that there were no other family members who could provide assistance. Mr Walker submitted that no such evidence has been provided to date.
25. Mr Walker relied on the Facilitated Returns Scheme and the \$100 provided to cover a returnee's immediate needs. He relied on paragraph 25 of the skeleton argument which showed that the situation in Somalia had changed. The Appellant had entrepreneurial skills which were obvious from his partnership in a business, the Polish shop. The Appellant could speak English and Somali. Even though he did not have any family members in Mogadishu, he was from the Ashraf clan which is a sub-clan of the Benadiri clan and as such he could benefit from some assistance on return.
26. In relation to Article 8, Mr Walker submitted that the claim should be dismissed on the basis of the Appellant's convictions. There were no exceptional circumstances. It was clear from the Appellant's evidence that his mother had help from the Somali community and had no need to turn to social services care. The Appellant could not

show very compelling circumstances on the basis of separation from his son which was insufficient in itself. Mr Walker relied on WZ (China) v Secretary of State for the Home Department [2017] EWCA Civ 795 and Secretary of State for the Home Department v AJ (Zimbabwe) [2016] EWCA Civ 1012 and invited me to dismiss the appeal.

The Appellant's Submissions

27. Mr Claire referred me to the final document attached to the Respondent's skeleton argument showing a picture of Somali Diasporans at the beach and quoting: "Somalis are returning from all corners of the globe, some moving back for good, others to seek business opportunities. As a result of this new addition to the city's residents, rent is sky high and competition between Diasporans and locals for the few government jobs available is becoming cut throat."

29. Mr Claire referred to paragraph 10 of his skeleton argument in which he quotes the Foreign and Commonwealth Office Guidance that terrorist groups plan attacks against westerners and there were food shortages. This was in stark contrast to the picture that the Respondent was attempting to paint in submitting the document "Return of the Quirky Somali Diasporans" and the photograph of the beach in Mogadishu.

30. Mr Claire referred me to the grounds of appeal and the factors which needed to be considered in assessing whether the Appellant could return to Somalia. These were set out in paragraph 9 of his skeleton argument where he refers to the CPIN No.3 of 2017 and paragraph 2.3.12. The Upper Tribunal in MOJ (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) stated that:

"The relevant considerations were but 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 security a livelihood whether that be employment or self-employment, availability of remittances from abroad, means of support during the time spent in the UK, why his ability to fund the journey to the west no longer enabled an Appellant to secure financial support on return. 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. 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."

31. Mr Claire submitted that the Appellant had never been to Mogadishu. His family had been persecuted on grounds of ethnicity and had suffered horrendous consequences. The Appellant had been absent from Somalia for seventeen years. He had no family there and no clan affiliations. The financial resources of his sister and brother were

such that they would not be able to assist him and there was evidence from the Appellant that they could not support him. Little had changed since the First-tier Tribunal concluded at paragraph 87 of the decision:

“The unchallenged evidence of the appellant and his various witnesses is that they know nobody at all in Mogadishu, that they have no personal connections to that city and that the appellant currently has no accommodation available to him in Mogadishu. However, Mr Grennan contended, in his submissions, that the appellant’s brother and sister could provide sufficient financial support to the appellant to enable him to establish himself in Mogadishu. In that regard, and as I have indicated above, Mr Grennan noted that Halima’s evidence was that now and then she would provide, say, £100 to her mother, when she was able to afford to. As also indicated above, Mr Grennan indicated that Omar had indicated in his oral evidence that he had provided support to the appellant. However, it is clear that Omar’s evidence was that he had never provided any financial support to the appellant and his evidence was that he has his own home to maintain, as well as a wife in India, for whom he is expending funds in seeking to obtain entry clearance for her. Applying the lower standard of proof, the available evidence would suggest that neither Omar nor Halima who has her own significant financial outgoings, is in a position financially to maintain the appellant. Further, the available evidence would indicate that they have never financially maintained the appellant. I do not find the provision of the occasional £100 to be indicative of a conclusion otherwise.”

32. The Appellant would be in difficulty seeking employment on return to Mogadishu on the basis of what was set out in the UNHCR letter at paragraph 6 of the Appellant’s skeleton argument. In particular it was noted that the Appellant’s representatives had voiced concerns regarding his ability to call on his clan for support given his lack of connection to Mogadishu, limited knowledge of the clan system and the fact that he is not a practising Muslim. In light of the above comments and the judgment of MOJ, UNHCR was concerned that the Appellant would not have access to a suitable support network upon his return to Mogadishu and urged the Home Office to consider the issue further. UNHCR also noted that, in paragraph 31 of its letter, the Home Office stated that the Appellant would have access to remittances from abroad upon his return to Somalia as he had family residing in the UK. However, UNHCR noted that evidence provided by the Appellant’s legal representatives suggest that the Appellant is responsible for supporting his mother, partner and son in the UK, is the main breadwinner for the family and that therefore his family would not be in a position to support him financially.
33. Finally, the Home Office stated that the Appellant would be able to support himself and secure a livelihood on return as he would be able to take advantage of the economic revival of Mogadishu and that the work experience and knowledge of the English language that he has gained whilst in the UK may place him at an advantage when seeking employment. In this respect UNHCR urged the Home Office to undertake a comprehensive assessment of the Appellant’s skills and work experience in order to support this assertion.

34. Mr Claire submitted that the Appellant had not been able to call on his clan for support as he had never been to Mogadishu and he had little knowledge of the clan system and was not a practising Muslim. The Appellant had been involved in criminality and had been securing his livelihood from selling class A drugs for which he had received a sentence in excess of four years. The Appellant had worked for a short time in a grocery store and had not been working since 2016. All matters taken together, the Appellant was not in a position to secure employment and would not be able to obtain accommodation. Conditions in an IDP camp contravene Article 3. Since the Appellant was a member of a minority clan, relying on the CIPN 2017, although a returnee may also seek assistance from clan members who are not close relatives such help is only likely to be forthcoming for majority clan members as minority clans have little to offer.
35. Mr Claire relied on the objective material in the grounds of appeal and in his skeleton argument. He emphasised that the Appellant's criminal offending was not relevant to the assessment of Article 3. He also relied on Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813 and submitted that whether the Appellant would be able to integrate on return to Mogadishu was a broadly evaluative judgment and the Appellant was not enough of an insider to understand and be able to operate in that society. His knowledge of the language and the culture were not sufficient. Although the Home Office had relied on a grant of £750 under the Voluntary Returns Scheme it was unclear how this would be paid to the Appellant or what this meant in real terms as to what the Appellant would be able to buy. When considering all of the matters in MOJ the Appellant would not be able to successfully integrate in Mogadishu such that he would be able to avoid the IDP camp.
36. In relation to Article 8, Mr Claire submitted that there were compelling circumstances in this case. He accepted that separation from his son, in itself, was insufficient to outweigh the public interest. The compelling circumstances began with the Appellant's mother and the evidence in her statement. The Appellant was her long term primary carer. The fact that the Appellant would be returned to Mogadishu and would be living in an IDP camp would have such an effect on his mother because of his lack of support on return and because he would be returned to a place where they have fled. The Appellant did not have a relationship with his partner but he had a very close relationship with his four year old son and would shortly become his sole carer. The Appellant had not had the benefit of his own father's support and wished to give that support to his son. On that basis the appeal should be allowed.

Article 3

Preserved Findings

37. The Appellant arrived in the UK in 2001. He is from the Ashraf clan, located in Kismayo. He had been heavily involved with the Somali community in Southampton. He worked as a meat wholesaler and had a part share in a Polish food shop. He was able to speak Somali. He was not a practising Muslim. He continued to commit criminal offences even after the end of his five year sentence and after the Home Office

warnings that deportation would be reconsidered. He lied to the Tribunal when he claimed to have been crime-free since 2012.

38. The First-tier Tribunal judge found that the Appellant had not rebutted the presumption under Section 72 of the Nationality, Immigration and Asylum Act 2002 and the Appellant had been unable to rely upon the Refugee Convention. The Appellant would not face persecution, as a result of clan membership, in Mogadishu or Somalia. There was no longer a Convention reason upon which the Appellant could successfully seek to rely.
39. The Appellant had entered into a Muslim marriage with his current partner, A O. The Appellant has not claimed to have renounced his faith. The Appellant's tattoos were not visible when the Appellant is clothed and in any event, there was no background material to show this would lead to risk on return. The Appellant has never lived in Mogadishu and he has no family or personal connections there.

Discussion and conclusions

40. I am persuaded by the Respondent's submission that, on a proper application of MOJ, the Appellant's appeal should be dismissed in respect of Article 3 because there was nothing about the Appellant's own personal characteristics which would materially affect his ability to find a livelihood for himself on return to Mogadishu even without additional support from his family or government or his own extended clan family. The Appellant in fact had numerous skills and work experience which were manifestly in his favour in returning to the Diaspora-driven economic boom in Mogadishu.
41. Upper Tribunal Judge Southern in AAW (expert evidence - weight) [2015] UKUT 673 (IAC), at paragraph 47, stated "The country guidance reminds us that it will be for the Appellant to explain why he would not be able to access the economic opportunities that had 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. The country guidance concludes that 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."
42. In MOJ, in respect of the appellant SSM, the court found at paragraph 480: "As a man approaching 30 years of age who is apparently in good health and who has spent time living in the United Kingdom, it is not immediately obvious what would disqualify him from seeking a low level job in one of the many new enterprises spawned by the economic explosion of entrepreneurship that Mogadishu has seen. There is some evidence that suggests that, especially for businessmen who are themselves diaspora returnees, those returning from abroad may be seen as more attractive prospects for employment than those who have never left."

43. I find that that on the Appellant's own evidence he was a person who was fit and well, had experience of working in the UK and a part share in a business and therefore it could not be argued that he would be unable to access a livelihood on return.
44. In relation to other sources of support the Respondent submitted that the Appellant failed to provide documentary evidence that he could not receive support from other members of his family. There is no burden on the Respondent to show that the Appellant did have support from family members. Further, there was the Facilitated Returns Scheme where the Appellant would be able to apply for up to £750 or if such an application was refused there was a minimum of \$100 return to deal with immediate needs.
45. The Appellant claims never to have received the Respondent's skeleton argument. It was sent to a legitimate email within the solicitors' business, although not directly the solicitor concerned. I find that the Appellant has an ample opportunity to provide evidence to support his claim that he could not receive financial support from his family. The burden is on him to produce this evidence, not for the Respondent to show otherwise.
46. There was insufficient evidence of financial support by the Appellant's family in the UK. His brother and sister both have well-paid jobs and whilst they do have their own lives to consider and expenses to pay, the Appellant failed to produce documentary evidence to show that they would be unable to support him in the short term. It is not appropriate for the Appellant to rely on their non-attendance at the hearing and the refusal of an adjournment because it is quite clear that this matter was in issue from the Upper Tribunal's decision of 11 April 2018 setting aside the finding that the Appellant had no access to funds and did not have any skills set of note, and directing the Appellant to submit any further evidence upon which he intended to rely.
47. The Appellant has no family in Mogadishu to look to for assistance in re-establishing himself. However, I am not persuaded that he will not be able to look to his clan for support because the Ashraf clan are a sub clan of the Benadiri. They are well-established and have in general rebuilt their businesses in the aftermath of the initial period of the civil war. A member of the Benadiri was appointed as District Commissioner. There had been a significant return to Mogadishu of Benadiri people after the departure from the city of Al-Shabaab and there were many Benadiri people living in Mogadishu who were successful business people and some were engaged or employed in the administration.
48. The Appellant has never been to Mogadishu and therefore clan support may well be limited. His involvement in the Somali community in the UK may be of some assistance to him, but even without any family or clan support, the Appellant has not shown that he would be unable to obtain employment. He had relevant skills and work experience in the UK and he had not shown that he had no prospect of securing a livelihood. The Appellant had not shown that he would be an internally displaced person who would have to reside in an IDP camp where humanitarian conditions were appalling.

49. Accordingly, I find that the Appellant would be able to access the economic boom that has occurred in Mogadishu since hostilities ceased and Al-Shabaab were driven from the area. On the facts presented by the Appellant, he has failed to show that he would be unable to obtain some form of employment to financially support himself and obtain accommodation.
50. I find that the Appellant has failed to show that return to Mogadishu would result in a breach of Article 3. In coming to this decision, I have not taken into account the Appellant's offending behaviour because it is not relevant to any such assessment. It is relevant however to an assessment of Article 8 which I will go on to consider.

Article 8

Summary of Factual Findings

51. The Appellant is not a refugee, he is not at risk of persecution on return and he is not at risk of indiscriminate violence. He has sufficient skills to be able to access employment opportunities and to financially support himself on return to Mogadishu. The Appellant is 32 years old and is fit and healthy. He has been supporting himself and members of his family in the UK, working in a Polish shop and he had a part share of the business until it closed because of bad debt. On the evidence he has failed to show that he would not benefit from the economic boom.
52. In addition the Appellant is from the Ashraf clan, a sub-clan of the Benadiri, he has been heavily involved with the Somali community in Southampton and stated in oral evidence that he had been assisting teaching football to the youth of the Somali community. He is able to speak Somali, he is not a practising Muslim and he would not be at risk on return because of his tattoos.

Discussion and conclusions

53. In relation to Article 8, the Appellant has to show very compelling circumstances over and above the exceptions in paragraph 399 and 399A of the Immigration Rules (Section 117C(4)(5)(6)). The relevant applicable case law is NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662, Hesham Ali and EA v Secretary of State for the Home Department [2017] EWCA Civ 10.
54. I find that the Appellant cannot satisfy paragraphs 399 and 399A of the Immigration Rules. On the facts set out above, there were no significant obstacles to his integration in Mogadishu given that he could obtain some form of employment to financially support himself and obtain accommodation.
55. The Appellant has a British citizen child who is 4 years old whom he sees at holidays and weekends. However, there was insufficient evidence to show that the Appellant's removal would have an unduly harsh effect on his child. The child has been living with his mother since birth and the Appellant has been in prison for six months since he was born. It was accepted by the Appellant's representative that separation from his child was insufficient in itself.

56. I am not persuaded that the Appellant is the primary carer for his mother. The evidence is such that he assists his mother with visits to the GP or the hospital, that she has some health difficulties but she also receives support from the Somali community, in particular, while the Appellant was imprisoned in 2008 until 2012 and during his six months' imprisonment in 2016. The Appellant's mother has recently travelled to Dubai with her sister and her sister's son. The evidence does not show that the Appellant's mother requires the Appellant to support her in order to go about her daily life. She quite clearly has some level of independence and some other means of support other than the Appellant. It would not have an unduly harsh effect on her should the Appellant be deported to Mogadishu. I am not persuaded by Mr Claire's submission that it would be unduly harsh for the Appellant to be returned to the place where his mother and family had fled many years ago.
57. The Appellant was not in a relationship with his partner and the absence of a father figure in his son's life did no amount to compelling circumstances such as to outweigh the public interest in deportation. The Appellant has committed very serious offences and received a long term of imprisonment. He has been warned that his offending behaviour might well lead to his deportation, but he continued to offend and committed a second offence of GBH in 2016 after his son was born. On the facts, the Appellant has failed to show compelling circumstances over and above the Immigration Rules.

Summary of conclusions

58. In deciding this appeal, I have taken the Appellant's evidence at its highest. He has failed to show that a return to Mogadishu would result in a breach of Article 3 or Article 8. For the reasons given above, I dismiss the appeal.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

J Frances

Signed

Date: 6 July 2018

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

J Frances

Signed

Date: 6 July 2018

Upper Tribunal Judge Frances