Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00128/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On Friday 31 August 2018	**On Tuesday 11 September 2018**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M A M
[ANONYMITY DIRECTION MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Cheng, legal representative, Duncan Lewis & Co
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this is an appeal which includes protection grounds, it is appropriate to continue that order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Moore promulgated on 12 June 2017 ("the Decision") dismissing the Appellant's appeal against the Secretary of State's decision dated 14 September 2016 revoking the Appellant's protection status and refusing his humanitarian protection and human rights claims.

2. The Respondent's decision is made in the context of a deportation order to remove the Appellant to Somalia. The Appellant was convicted of rape of a male aged over sixteen years, sentenced to seven years' imprisonment and placed on the sex offender's register indefinitely. The Respondent certified the Appellant's protection claim under section 72 Nationality, Immigration and Asylum Act 2002 on the basis of his offending. The Judge upheld the certificate. In consequence and in accordance with what is said in the Tribunal's decision in Essa (Revocation of protection status appeals) [2018] UKUT 00244 (IAC), the appeal in relation to the revocation of protection decision must be dismissed (as it was). Mr Cheng also accepted that there could be no challenge to the Appellant's exclusion from humanitarian protection.

3. The only issue which remains therefore is whether deportation will breach the Appellant's human rights, specifically those under Article 3 ECHR, arising from the situation in Mogadishu. The Judge rejected that claim and therefore dismissed the appeal on all grounds.

4. The sole focus of the Appellant's grounds is [35] of the Decision, the relevant part of which I set out below. The Appellant accepts that the guidance relevant to the Decision is that contained in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) ("MOJ & Ors") but says that the Judge has failed to consider how the Appellant can be expected to survive in Mogadishu in the period before he is able to obtain employment. It is said that, based on the Judge's findings, there is a real risk that the Appellant would be obliged to seek accommodation in an IDP camp and it is accepted in MOJ & Ors that there is a real possibility that conditions in those camps breaches Article 3 ECHR. It is therefore said that the Appellant is entitled to succeed on his Article 3 ground.

5. Permission to appeal was refused by First-tier Tribunal Judge Lambert on 4 April 2018. However, permission to appeal was granted by Upper Tribunal Judge Lindsley on 17 July 2018 in the following terms:

> "1. The appellant is a citizen of Somalia who is resisting deportation from the UK.
>
> 2. This is a renewed application for permission to appeal against the decision of the First-tier Tribunal made at Hendon dismissing the appeal on all grounds.

> 3. The grounds of appeal contend, in summary, that firstly time should be extended due to delays in the appellant himself obtaining the decision from his previous representatives which led to delays in lodging the application with the First-tier Tribunal. It is argued that the First-tier Tribunal erred in law at paragraph 35 of the decision by arguably finding that the appellant might take some time to find employment and then dismissing the appeal. This is arguably unlawful in light of what is said in the guidance decision of MOJ where it was found having to resettle to an IDP camp would put an appellant at real risk of Article 3 ECHR breaches.
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> 4. I extend time and find that the grounds are arguable."

6. The matter comes before me to decide whether the Decision contains a material error of law and if so to re-make the decision or remit the appeal to the First-tier Tribunal.

Decision and Reasons

7. Paragraph [35] of the Decision reads as follows so far as relevant:

> "…The Tribunal [in MOJ] listed a number of considerations to be borne in mind for a person facing a return to Mogadishu after a period of absence if there was no nuclear family or close relatives in the city to assist him in re-establishing himself on return. I have borne in mind this appellant's length of absence from Mogadishu and accept that he may not have any family members living in Somalia apart from the mother of his wife in the UK. The appellant has claimed that family members have offered him financial support in the UK and I see no reason why the same family members could not provide similar financial support if the appellant was to return to Somalia. If the appellant is from a minority clan as he has claimed then that may well pose some difficulties for him, but even with such difficulties he should within a reasonable period of time gain some form of employment and access some of the economic opportunities in that country. I do not accept that the circumstances for this appellant on return would fall below that which is acceptable in Humanitarian Protection terms. Life will undoubtedly be difficult but will not in my view fall below acceptable humanitarian standards. In a witness statement provided by the appellant and dated 12th July 2005 he stated that he was born in Mogadishu and that his last address in Somalia was in Mogadishu and this appellant gave details of six siblings who were born in Mogadishu, and it would appear that the immigration status document issued to the appellant gave his place of birth as Mogadishu. It clearly seems to be the case that this appellant had previously resided in Mogadishu and therefore when he left Somalia had ties with that country city. The appellant is an adult male in good health who spent his youth and formative years in Mogadishu and speaks Somali. Having considered the personal circumstances of this appellant and all the evidence before me I consider that removal to Mogadishu in Somalia would not infringe the appellant's Article 3 ECHR rights…."

8. That passage has to be read in the context of the guidance given in MOJ & Ors as follows (so far as relevant to this issue):

"…

(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:

- *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 securing a livelihood, whether that be employment or self employment;*
- *availability of remittances from abroad;*
- *means of support during the time spent in the United Kingdom;*
- *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."

9. Mr Cheng relied heavily on the Judge's finding that the Appellant "should within a reasonable time gain access to some form of employment". His submission is straightforward. He says that this may be so but does not explain how the Appellant is to survive without recourse to IDP camps in the meanwhile. That though ignores the reference in the preceding sentence to remittances from his family in the UK, a factor to which the Tribunal specifically referred in MOJ & Ors. Mr Cheng submitted that the finding that such support would be available is contrary to the finding at [39] of the Decision where he said that the Judge

rejected the Appellant's evidence as to that financial support, at least in relation to the Appellant's brother and sister. However, not only does any such conflict of findings not appear in the Appellant's grounds but, as Mr Walker pointed out, there are other family members in the UK such as the Appellant's mother and his wife.

10. In any event, as I pointed out to Mr Cheng, the Judge's refusal to accept the Appellant's evidence about his brother and sister comes in the context of his findings about contact with them in relation to the Article 8 claim, rather than any rejection of the Appellant's evidence that they provide him with support. It is the Appellant's own case that his brother and sister provide him with financial support in the UK because he is unable to work ([20] of his statement). It is not open to him therefore to seek to undermine the Judge's finding about the availability of financial support from this country by suggesting that this evidence ought not to be accepted.

11. Mr Cheng also argued that the finding that the Appellant could only find employment after a reasonable time had to be read in the context of the "difficulties" which the Judge accepted that the Appellant would face on return as a member of a minority clan. He said that the Judge does not say what those difficulties would be and that such difficulties may therefore impact on the remaining findings about the situation the Appellant would face in Mogadishu.

12. I am unable to accept that submission. The Judge's finding is clear when read in context. The significance of the Appellant being from a minority clan and the finding that this may create difficulties is in the context of the Appellant finding work as is clear from the second part of the sentence. That arises in the context of what is said by the Tribunal in MOJ & Ors at (vii) and (viii) of the headnote that a returnee may look to his clan for "assistance in re-establishing himself and securing a livelihood" (where he has no "nuclear family" in the city) but that "minority clans may have little [assistance] to offer". Read in context, the difficulties are clearly restricted to the finding of work. As I have already explained, the finding that the Appellant may therefore take a "reasonable time" to find work, needs to be read with the finding that he could rely on financial support from relatives in the UK (in the meanwhile).

13. As Mr Walker pointed out, the Appellant was aged eighteen when he left Somalia. He would therefore be aware of the culture. He speaks the Somali language. The sentence on which the Appellant relies has to be read in the context of the paragraph overall which follows the guidance set out in MOJ & Ors. I accept that submission.

14. Read as a whole, and in the context of the guidance set out in MOJ & Ors, there is no error of law in the Judge's approach at [35] of the Decision. He has regard to the relevant factors. For the reasons given at [35], the Judge was entitled to reach the conclusion that he did that the Appellant's deportation to Somalia will not breach Article 3 ECHR.

15. The Decision does not disclose any material error of law. I therefore uphold the Decision.

DECISION

I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge Moore promulgated on 12 June 2017 with the consequence that the Appellant's appeal stands dismissed

Signed Dated: 6 September 2018
Upper Tribunal Judge Smith