



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

Appeal Number: PA/02747/2018

**THE IMMIGRATION ACTS**

**Heard at Newport**

**Decision & Reasons  
Promulgated**

**On 23 November 2018**

**On 4 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**I H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M Bayoumi of Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mr C Howells, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Loughridge promulgated on 6 July 2018 in which he dismissed the appeal of the Appellant against a decision of the Respondent dated 19 January 2018 to make a deportation order.
2. The Appellant is a citizen of Somalia born on 27 February 1993. He arrived in the UK on 24 August 2009 and claimed asylum. He was refused asylum on 8 October 2009 but was granted discretionary leave to remain until 27

August 2010 in accordance with the Respondent's 'unaccompanied asylum seeking child' ('UASC') policy.

3. On 24 August 2010 the Appellant applied for further leave to remain. The application was refused on 5 October 2010 and a subsequent appeal dismissed in a decision of Immigration Judge O'Connor promulgated on 17 March 2011 (ref. AA/15460/2010 – see Respondent's bundle, Annex J).
4. Thereafter the Appellant made further representations in respect of his asylum claim which were again refused. A further appeal was finally dismissed in a decision of First-tier Tribunal Judge Napthine promulgated on 25 March 2015 (ref AA/00999/2014, Annex N) after an earlier decision of the first-tier Tribunal had been set aside by the Upper Tribunal (Annex M).
5. On 12 June 2016 the Appellant was stopped at Heathrow airport trying to travel to Canada using another person's British passport. The Appellant was convicted of possession of identity documents with intent upon a guilty plea, and sentenced on 11 July 2016 to 12 months imprisonment with a recommendation for deportation (Annexes P and Q).
6. The Respondent then commenced deportation procedures culminating in a Deportation Order dated 19 January 2018, served on 22 January 2018 together with a 'reasons' letter.
7. The Appellant appealed to the IAC.
8. The appeal was dismissed for the reasons set out in the Decision and Reasons of Judge Loughridge promulgated on 6 July 2018.
9. The Appellant applied for permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Blundell 15 August 2018.
10. Before the First-tier Tribunal the Appellant sought to resist the Respondent's Deportation Order on protection grounds (with reference to

both the Refugee Convention and Articles 2 and 3 of the ECHR), and on human rights grounds (with reference to Article 8 of the ECHR). The appeal was dismissed on all grounds.

11. The challenge before the Upper Tribunal focuses on the protection grounds.
12. The Grounds of Appeal in support of the application for permission to appeal plead that the First-tier Tribunal Judge misapplied the country guidance in **MOJ and others (Return to Mogadishu) Somalia CG [2014] UKUT 44 (IAC)**. The grounds were amplified before me by way of a Skeleton Argument and the oral submissions of Ms Bayoumi.
13. It is not suggested that the Judge did not have regard to the case of **MOJ**. Manifestly he had it in mind because it is referred to repeatedly - particularly in the context of quoting at length from the Respondent's Country Policy and Information Note of July 2017 which cross-refers to **MOJ**: see paragraphs 31, 32, and 35. Moreover Ms Bayoumi acknowledged that paragraph 39 of the Judge's decision adequately and accurately reflected relevant parts of the country guidance:

*"As regards the risk of serious harm in consequence of being forced to live in an IDP camp, that will depend on the Appellant's access to family/other support, the extent of any remittances from the UK and his ability to work."* (Paragraph 39).

See in this context paragraph (xi) of the headnote in **MOJ**:

*"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."*

14. Rather, the grounds and written submissions plead that the Judge misapplied the country guidance to the facts of the case. However, upon further discussion, in the course of submissions Ms Bayoumi - with one caveat - acknowledged that the real substance of the challenge was not so much in respect of misapplication of the country guidance, but a

dissatisfaction with the Judge's findings in respect of the Appellant's ability to work.

15. Ms Bayoumi's caveat - which in effect stood as the only basis of challenge to the decision of the First-tier Tribunal - arose from paragraph 341 of **MOJ**:

*"There is evidence also from a number of sources that the importance of what has been termed "the nuclear family" has become more significant than membership of a clan. This was recognised by UNHCR in the report dated 25 September 2013 which is mentioned above and to which we will return below. It is plain that the significance of clan membership has changed and, increasingly, residents of Mogadishu look to their nuclear family for support, protection and access to a livelihood. But, of course, the close relatives involved would invariably also be members of the same clan but it is the family relationship, rather than clan membership, that is of significance. It is, perhaps, entirely unsurprising that people choose to live in areas where relatives are established or that district police forces, being drawn from the area in which they operate, reflect the numerical dominance of the clan predominately present:*

*"UNHCR-Somalia, Mogadishu, confirmed that someone in Mogadishu will not be at risk today solely because he/she is of a different clan, although clan dynamics in combination with other factors are an important element when considering risk, including for the IDP population. It is obvious that one is safer when he or she is residing in an area dominated by his or her own clan or if one has good relations with a dominating clan."*

16. Ms Bayoumi argued that this demonstrated that having a family by way of support was an important factor in being able to access the job market to take advantage of the so-called economic boom. She submitted that absent such a network there would be barriers to finding employment.
17. I do not accept that paragraph 341 can bear that construction. The fact that persons increasingly turn to family for support rather than specifically their clan, and that such support may include 'access to a livelihood'- i.e. that family members may provide assistance in accessing employment - does not mean that the absence of family support constitutes a barrier to employment. Indeed it seems to me abundantly clear from a sequential

reading of the headnote in **MOJ** that the country guidance expressly recognised that persons without a family support network may yet be able to find employment, but that evaluation of such a person's prospects will require careful consideration of all of the particular circumstances, with the burden of proof being on the applicant/appellant - see headnote at paragraph (ix) and (x).

*“(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.*

18. On such bases I do not accept the essential premise of Ms Bayoumi's submission.

19. It is convenient to note at this juncture that my attention was directed to the Judge's observation at paragraph 40 to the effect that, notwithstanding the failure to trace his mother and sister through the Red Cross, and Judge Loughridge's acceptance of the Appellant's evidence that he had not been in touch with family members since he left Somalia, the Judge nonetheless observed that *“there is some prospect”* of the Appellant being *“able to trace his mother and sisters if he was physically present in Mogadishu and able to return to the locality where he used to live and to make enquiries”*. It was argued that the Judge was not entitled to make such a finding on the available evidence. Even if I thought there were

substance in this point, it seems to me that it could not possibly avail the Appellant in challenging the outcome decision because it is rendered immaterial given that in the final analysis at paragraph 43 the Judge considered the Appellant's ability to establish himself *"irrespective of whether he is able to make contact with his mother/sisters, or to link up with any other members of [his] clan who can provide support"*.

20. In such circumstances I can identify no foundation for concluding that the Judge has misunderstood or misapplied the country guidance of **MOJ** to the particular findings in the appeal.
21. As I have noted above the real substance of the challenge is in respect of the Judge's finding as to the Appellant's prospect of establishing himself. Indeed when I invited Ms Bayoumi to articulate what it was in the decision that offended against the country guidance she responded by stating that it was the Judge *"speculating"* that the Appellant would be able to establish himself in Mogadishu.
22. The challenge in this regard in my judgement is essentially one of disagreement with the outcome, and constitutes an attempt to reargue the case; it does not involve identification of any error of law.
23. The challenge seeks to criticise the Judge's findings as being 'speculative': e.g. *"...FtTJ Loughridge's assertion that the Appellant could access employment is irrational given the speculative nature it is based upon..."* (paragraph 13 of the Grounds). In my judgement there is no merit in such a submission - either in respect of 'irrationality' or 'speculation'. The Judge's decision is not founded on speculation: it is adequately clear that the Judge evaluated the available evidence and made reasonable inferences from the evidence. The conclusions were not irrational: they were entirely open to the Judge on the basis of the available evidence, and bearing in mind those passages in the country guidance considered above. In my judgement this is manifest from paragraphs 41 and 42 of the decision:

*"41. Finally, in respect of being able to work the starting point is obviously that the Appellant is a young man, in relatively good health, and furthermore he indicated in oral evidence that he has an IT qualification. What might cause a move away from the starting point?"*

*Notwithstanding that Dr Munro is not a psychiatrist I accept his diagnosis of PTSD (on the basis that he has clearly applied the relevant criteria, and indeed he appears to have conducted quite a detailed assessment during the consultation). This diagnosis is consistent, to a degree, with references in the medical records in August 2017 to anxiety, flashbacks and nightmares, and to being put on amitriptyline and referred for therapy. However, it is significant that in the Appellant's Nass health assessment on 12 June 2017... he was stated to have "no apparent mental health issues" and overall I find that his symptoms are not at a level which would interfere with his ability to work. As for his physical health, whilst I acknowledge that he has some back pain it is, similarly, not at a level which would reasonably interfere with his ability to work, even in a manual occupation. Once again, the Nass health assessment is enlightening: although there is a brief reference to "back pain when walking uphill" for which he takes pain relief there is also a reference to "goes to the gym" for exercise. If he is capable of going to the gym for exercise he is likely to be capable of undertaking a wide variety of manual jobs.*

*42. Taking all of these factors into account I find that there is a good prospect of the Appellant being able to find work in Mogadishu. There may be opportunities for him to make use of his knowledge/experience of IT, which is likely to be in demand in such a large city. Alternatively, I note the reference in a report cited in the Skeleton Argument to work in transport, such as dockers at the port, or labourers at a construction site, and I consider that to be work he is capable of doing. I do not say that it will be easy for him, and he will need to be resourceful in making the necessary enquiries. However, with the right attitude and commitment he is likely to be successful and I am confident that he will be able to establish a life irrespective of whether he is able to make contact with his mother/sisters or to link up with any other members of [his] clan who can provide support. As the Respondent points out in the refusal letter the Facilitated Return Scheme may be able to provide some measure of support and assistance."*

24. Ms Bayoumi also argued that the Judge's findings were undermined by reason of the Appellant not having been cross-examined on these matters. I note that in his witness statement signed on 12 June 2018 at paragraph 36 in this context he said little more than "I would not be able to get a job or make a life and would likely end up destitute and vulnerable. I've never had employment in my life, I have no transferable skills to get a job and I

*would surely be treated as an outsider, subject to discrimination as a result of my time in the UK*". It is difficult to see what nature of cross-examination might have been relevant, or might otherwise have strengthened the Appellant's assertions, or undermined the Judge's evaluation based on the available evidence. This was essentially a matter of the Judge needing to evaluate the situation from the premise of broadly undisputed primary facts.

25. Moreover, it is clear that employment was an issue in the proceedings: in the Respondent's decision letter it was asserted, amongst other things, that the Appellant "*as an adult,... can reasonably be expected to live independently utilising any skills/training/experience obtained whilst in the UK*"; the Appellant offered a view as to his prospects in his witness statement (as quoted above), which was adopted in his oral evidence (see paragraph 4 of the First-tier Tribunal's decision); and submissions were made in this regard by both representatives (paragraphs 5 and 7). The Appellant was plainly alert to the issue and presented his evidence in the appeal accordingly. In my judgement it cannot be suggested that he has been in any way disadvantaged by any lack of cross-examination; the fact that he opined that his skills (or lack of skills) was such as to present an obstacle to finding employment was not in itself determinative and was not something that the Judge was obliged to accept simply because the Appellant was not cross-examined on his opinion. It is to be recalled that the burden of proof was upon him, and he does not discharge that burden simply by expressing an opinion. Nor was the Judge required to accept that opinion, particularly if the evidence upon analysis pointed in a different direction.
  
26. In such circumstance, as I have said, in my judgement this aspect of the Appellant's challenge amounts to no more than a disagreement with the evaluation of the Judge and an attempt to reargue the case. There is no error of law in this or any other aspect of the decision.

### **Notice of Decision**

27. The decision of the First-tier Tribunal contained no error of law and stands.
  
28. The Appellant's appeal remains dismissed.



**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: **17 January 2018**

**Deputy Upper Tribunal Judge I A Lewis**