



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

Appeal Number: PA/11108/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 October 2018**

**Decision & Reasons Promulgated  
On 02 January 2019**

**Before**

**THE HONOURABLE MRS JUSTICE MAY DBE  
UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**N L S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Miss G Mellon, Counsel instructed by Wilson Solicitors LLP

**DECISION AND REASONS**

**Anonymity Direction**

*The Upper Tribunal has made an anonymity direction pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.*

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal Judge allowing the appellant's appeal against the decision dated 14 October 2017 to make a deportation order requiring his removal back to Mogadishu, Somalia.
2. The appellant is a citizen of Somalia where his area of origin is in the province of Gaedo. He was born in 1988 and is now 30 years old. He came to the UK on 25 November 2013 and immediately sought asylum. His application was refused on 3 November 2014 and he appealed.

### **The 2014 First-tier Tribunal decision**

3. The appellant's protection and human rights appeal was heard by Immigration Judge Fox on 29 December 2014. In a decision dated 31 December 2014 Judge Fox dismissed the appeal on all grounds, but found as a fact that the appellant was a member of the Ashraf minority clan.
4. The key issue in the protection decision was internal relocation: the First-tier Judge found that it was reasonable to expect the appellant as a member of the Ashraf clan to relocate internally from his home area in Gaedo to the capital of Somalia, Mogadishu.
5. There was an appeal to the Upper Tribunal from Judge Fox's decision but the appeal was dismissed on 3 July 2015.

### **The deportation order**

6. Thereafter it seems the appellant made arrangements to travel to Canada in order to seek asylum there. He was arrested before leaving the UK and charged with possessing a false identity document. He pleaded guilty before Lewes Crown Court on 28 March 2017 and was sentenced to twelve months immediate imprisonment.
7. On 15 May 2017, the appellant was served with a notice of deportation and on 4 August his solicitors submitted representations to the Secretary of State to the effect that deporting him would be a breach of Articles 3 and 8. The decision to deport was nevertheless maintained on 16 October 2017.
8. The appellant's representatives lodged an appeal against that decision which came before the First-tier Tribunal on 16 May 2018.

### **The FTT Decision on the Appeal**

9. At paragraph 17 of her decision the First-tier Tribunal Judge identified the issue for her decision on the appeal, namely the reasonableness of the appellant relocating to Mogadishu. The Secretary of State accepted at the outset that the appellant would be at real risk in his home area in Gaedo. There was no question of his being able to return there.

10. The judge referred to the case of **Devaseelan** and indicated that she had taken as her starting point the findings made by Immigration Judge Fox when refusing the appellant's asylum and human rights claims in 2014. She rightly identified at paragraph 45 of her decision the necessity of establishing whether there was now additional information which had not been before Judge Fox when he made his decision, which could put a different light on the appellant's situation regarding internal relocation to the capital.
11. The judge directed herself by reference to the guidance given in **MOJ v The Secretary of State for the Home Department [2014] UKUT 00442 (IAC)**. I will refer to this as "the Somalia country guidance". She noted in her decision at paragraph 55 that both sides' representatives had referred her to several passages in that country guidance. She went on to evaluate the appellant's particular circumstances in the light of further material now available, including in particular a report by Mr Roger Middleton giving expert evidence about conditions in Somalia and Mogadishu, and an expert psychiatric report dealing with the appellant's current mental health issues. It was reported that he has PTSD arising from the events surrounding his departure from Somalia in 2013. The judge's conclusion at paragraph 62, repeated at paragraph 66, was that:-

"...it would not be reasonable for this particular Appellant, given all the factors that have been presented to me and, most notably, the factors that have been highlighted since Immigration Judge Fox reached his decision, that it would not be reasonable for the Appellant to go to Mogadishu now."

### **Arguments Raised on this Appeal**

12. I have looked in vain for any Rule 24 response from the respondent as ordered by the Principal Resident Judge, nor was there any skeleton argument from either party as had also been ordered. I find it discourteous in the extreme, bordering on contempt, for directions to be ignored like this.
13. Moving to the Secretary of State's argument set out in a section entitled "Reasons for appealing" in the form, it is said that the First-tier Judge made a material error of law in her determination. The error she is said to have made is fourfold. Firstly, it is said there was a failure to follow the country guidance.
14. Secondly, a failure properly to take into account or consider financial circumstances and ability to find work. The examples given are a failure to take into account the money which had been used to buy the return ticket to Canada and the \$US300 found on the appellant at the time of his arrest, the financial assistance that there was available from friends in the UK, the facilitated return scheme referred to in the country guidance at paragraph 423, and for the fact that someone who can do agricultural labouring must also be able to find work as a manual labourer in the city. In argument Mr Melvin described the First-tier Judge's decision that there

would be no work in the city for the appellant as an agricultural labourer as “bordering on irrational”.

15. Thirdly, it is said that there was a failure to follow the Court of Appeal’s decision in the case of **Said [2016] Imm AR 1084** where the circumstances of the applicant in that case (AS) are said to have been similar to those of the appellant and where the Court of Appeal overturned a First-tier Tribunal decision directing that there should be no return.
16. Fourthly and lastly, it is said that the Tribunal Judge erred in making findings contrary to the country guidance where an economic boom was identified in Mogadishu specifically advantaging returnees to the country.
17. Miss Mellon’s response to these arguments was commendably succinct. She contended that the judge had properly taken account of the country guidance, the decision of Tribunal Judge Fox and the evidence which was before her. Miss Mellon argued that the Judge came to findings properly reasoned which were open to her to reach; she characterised the Secretary of State’s appeal as no more than a disagreement with the judge’s conclusions and consequently a challenge which should not succeed. She referred us to the Court of Appeal decision in a recent case of **FY [2017] EWCA Civ 1853**.

### **Discussion and Conclusions**

18. The Somalia country guidance sets out at paragraphs 407 and 408 the enquiry that the Tribunal must make in relation to cases where a person is to be relocated to Mogadishu:-

“407. ...

- f. 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.
- g. The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assistance 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.
- h. 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:
  - (i) circumstances in Mogadishu before departure;

- (ii) length of absence from Mogadishu;
- (iii) family or clan associations to call upon in Mogadishu;
- (iv) access to financial resources;
- (v) prospects of securing a livelihood, whether that be employment or self employment;
- (vi) availability of remittances from abroad;
- (vii) means of support during the time spent in the United Kingdom;
- (viii) why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return. Put another way, it will be for the person facing return to Mogadishu 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.

408. 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."

19. No doubt these and other passages from the country guidance were referred to the Tribunal Judge at the hearing. As I have already stated she records in her judgment having been taken to various parts of the guidance. Mr Melvin sought to suggest that the judge had not applied the principle that it was for the person returning to explain why he would not be able to access work in Mogadishu, but there is nothing in the decision which bears out this criticism. It is true that the judge did not explicitly set out the contents of paragraph 408 in her judgment, but we are quite satisfied that she would have been referred to it and would have had it in mind.
20. So far as having particular financial circumstances in mind for the purposes for her decision the judge expressly referred to the evidence on financial resources, going through it all at paragraphs 24 to 30 of her decision. There was no explicit reference to the financial referral scheme referred to at paragraph 423 of the country guidance, but this was hardly surprising as no argument had been addressed to this scheme and the possibility of the appellant benefitting from it at the hearing. Mr Melvin pointed to the Secretary of State's decision letter where the scheme was mentioned and relied on, but was unable to assist with whether the appellant would have been eligible for financial assistance under the scheme. This may have been a reason why it was not raised specifically at the hearing. Miss Mellon told us today that he would not qualify. We reach no concluded view on that as we do not have sufficient information. We simply note that it was not in issue at the hearing and is anyway a discretionary scheme even if the appellant did qualify.

21. So far as the decision in **Said** is concerned that was not an asylum case, and in any event the circumstances of the appellant in that case were evidently dissimilar to those of the appellant. The court in **Said** makes reference to the prospect of employment, to clan support and the availability of remittances at paragraph 32 of the decision directly contrary to the findings of fact made here. As to the country guidance identification of an economic boom in Somalia, the failure to have sufficient regard to this was the subject of criticism in the case of **MA [2018] EWCA Civ 994** to which we were directed. Mr Melvin invited us to find that the judge had disregarded the economic boom in the appellant's case. However, as the Court of Appeal pointed out in FY at paragraph 21 the fact of an economic boom is not to be equated with all returnees being sure of obtaining employment regardless of suitability.
22. The First-tier Judge here considered the country guidance and the evidence relating to the appellant and concluded at paragraph 50 of her decision that there were no opportunities for a person with his background in agricultural labouring. In our view this was not an irrational conclusion, nor even one bordering on irrational. It is one perhaps to which another court may not have arrived, but we cannot say that it was not a finding which was open to the judge on the evidence. It plainly was. In our view Miss Mellon is right. This appeal is no more than an attempt impermissibly to revisit findings of fact made by an expert Tribunal which had heard all the evidence. The First-tier Tribunal Judge addressed the right question, applied the right principles and gave a properly reasoned judgment making findings which were open to her to arrive at. There was no error. It follows that the appeal must be dismissed.

Signed Mrs Justice May

Date 20 December 2018

Mrs Justice May