Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00061/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 May 2019	**On 01 July 2019**

Before

UPPER TRIBUNAL JUDGE BLUM
UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAS
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr L. Moore, Deputy Senior Home Office Presenting Officer
For the Respondent: Ms R. Moffatt, Counsel, instructed by the Harrow Law Centre

DECISION AND REASONS

1. This case concerns whether the judge below was justified in departing from the relevant country guidance. This is an appeal of the Secretary of State against a decision of First-tier Tribunal Judge Bird promulgated on 20 February 2019 allowing the claimant's appeal against the Secretary of State's decision to refuse to revoke the deportation order made against him and to revoke his protection status.

Factual background

2. The claimant is SAS, a citizen of Somalia born 1 October 1971. He arrived in this country in 1999 and was granted asylum on 13 June 2000. The basis of his grant of asylum arose from his family's membership of the Reerhamar-Bandhabow minority clan in Somalia. When the civil war started in 1991, the ruling party started to persecute minority clan members. The claimant's family home was raided by the authorities, plundered, and the women raped. The family fled internally and became destitute. The appellant was later attacked and left for dead by government forces. He fled to Ethiopia and later the United Kingdom. He was recognised as a refugee by the Secretary of State.

3. On 24 March 2017 in the Crown Court at Wood Green, the claimant was convicted of three counts of dishonestly making a false representation and was sentenced to 12 months' imprisonment. On 21 August 2017, the Secretary of State served a notice of a decision to make a deportation order on the claimant. He was notified that he was subject to the statutory presumption contained in section 72 of the Nationality, Immigration and Asylum Act 2002. It is now common ground that that certification was in error; pursuant to section 72(2)(b), the presumption is engaged only in relation to periods of imprisonment of at least two years. As outlined by the First-tier Tribunal at [13], the certificate was withdrawn by the respondent: see the respondent's letter dated 17 October 2018.

4. On 22 November 2017, the Secretary of State informed the claimant that he intended to revoke his refugee status. Correspondence between the claimant's solicitors and the respondent, and the United Nations High Commissioner for Refugees ("the UNHCR") followed. This culminated in a decision of the Secretary of State dated 27 February 2018 revoking the appellant's refugee status. On 10 April 2018, the claimant was served with a signed deportation order and a decision to refuse his protection and human rights claim, made in response to the Secretary of State's earlier indications that he was minded to revoke his refugee status.

5. The basis upon which the Secretary of State revoked the claimant's refugee status was that the circumstances in which he was recognised as a refugee had ceased to exist, pursuant to paragraph 339A(vi) of the Immigration Rules, which give effect to Article 1C(5) of the Refugee Convention. The Secretary of State based his decision on MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), to which we return in more detail below.

6. The claimant appealed to the First-tier Tribunal against the 10 April 2018 decision. Judge Bird allowed his appeal on the basis that conditions in Mogadishu and Somalia generally had changed since MOJ, such that a departure from the country guidance was merited. The claimant succeeded on Article 3 grounds in any event in the alternative.

Permission to appeal

7. Permission to appeal was granted by Upper Tribunal Judge Hansen on the basis that it was arguable that there was insufficient evidence to merit a departure from **MOJ**. As such, the Judge's findings at [63] that the respondent had not demonstrated that there had been a durable and permanent change were arguably infected by the erroneous departure from the country guidance.

Documents

8. In addition to the materials that were before the First-tier Tribunal, we have been provided with written submissions by the Secretary of State, and a response under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 from the claimant.

Submissions

9. On behalf of the Secretary of State, the presenting officer submits that the judge materially erred in her finding that there had not been a significant and non-temporary change in the conditions in Somalia which merited his earlier recognition as a refugee. This submission is based primarily on the following clear findings outlined in the headnote to MOJ, which held that conditions in Mogadishu had stabilised considerably. See the following relevant extracts from the headnote:

> "(ii) Generally, a person who is "an ordinary civilian" (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution…
>
> (iii) There has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM [and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC)] …
>
> (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."

10. Paragraph 342 of MOJ states that clan membership is no longer a potential risk factor, but rather a factor relevant to whether an individual would be able to access support structures upon their return.

11. It is the Secretary of State's position that if MOJ were applied to the claimant, his appeal would be bound to fail. The Secretary of State relies

on the test for departing from country guidance articulated in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 at [47] in these terms:

> "… tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so."

In the Secretary of State's submission, the evidence relied upon by the judge to justify her departure from MOJ did not provide the requisite very strong grounds or cogent evidence. Indeed, it is the Secretary of State's case that not only did the reasons given by the judge not amount to a sufficiently strong basis to justify departing from MOJ, but the judge misunderstood and misquoted the evidence she took into account in attempting to do so.

12. The presenting officer submits that the Judge's reliance on the respondent's *Country Policy and Information Note*, *Somalia: (South and Central): Security and humanitarian situation*, version 4.0, September 2018 ("the September 2018 CPIN") was misplaced. The Judge relied on passages in the September 2018 CPIN which related to clan violence and clan militia in parts of the country other than in Mogadishu (e.g., [6.4.1] and following), leaving the claimant's home area of Mogadishu unaffected. The judge quoted selectively from the document, highlighting the fact that [2.5.16] stated that in 2017, "conflict levels remained high and the situation volatile", whereas [2.5.17] stated that, "[t]he general security situation across the country, including in Mogadishu… has improved since MOJ…".

13. The Judge's reliance on UNHCR materials, in particular its publication, *Position on Returns to Southern and Central Somalia (Update 1), May 2016,* was also misplaced, submits the presenting officer. By definition, the UNHCR is concerned with the return of unsuccessful asylum seekers and has a broader remit than the narrow focus of the Tribunal, pursuant to the 1951 Convention. Returnees do not have a well-founded fear of persecution. The approach of the UNHCR must by analysed against that background (LP (Sri Lanka) CG [2007] UKAIT 00076 at [148] and [203]), contend the grounds. As such, the Judge erred by treating the UNHCR approach as authoritative.

14. At [43], the Judge quoted the UNHCR's reliance on an extract from the respondent's *Country Policy and Information Note: Somalia (South and Central): Security and humanitarian situation*, version 3.0, July 2017 ("the July 2017 CPIN") in its letter dated 22 February 2018, sent to the respondent pursuant to the process contained in paragraph 358C of the Immigration Rules. At [7.1.2], the July 2017 CPIN itself relied upon and quoted the 2016 US State Department's report on Somalia, stating that deaths had resulted from African Union troops clashing with Al-Shabaab, and from clashes between clan forces and Al-Shabaab in the Galmudug, Lower Shabell and Hiraan regions. The claimant's home area of

Mogadishu is unaffected by those clashes, contends the presenting officer. Moreover, minority clans such as the appellant's do not have their own militia, meaning the inter-clan rivalry and clashes with Al-Shabaab are unlikely to affect the claimant, as suggested by a proper reading and application of MOJ.

15. The presenting officer also criticises the Judge for relying upon an extract from the Danish Refugee Council's 2017 report, quoted by the UNHCR and the July 2017 CPIN. The extract states that Mogadishu is under "constant threat" from Al-Shabaab and is considered to be infiltrated by it. The Judge did not have sight of the full report, and the extract relied upon by the Judge also noted that the security situation had "significantly improved" when compared to the 1990s. Taken at its highest, the report noted that the current situation is "blurred" which, contends the presenting officer, is an insufficient basis to merit departure from MOJ.

16. The presenting officer also submits that, even if the areas outside Mogadishu have descended into unrest and persecutory practices, it would be speculative to assume that Mogadishu itself is infected. Pursuant to MA (Somalia) v Secretary of State for the Home Department [2018] EWCA Civ 994 at [2(1)], it is not necessary for the country of origin to have a system of government or an effective legal system for protecting basic human rights.

17. For the claimant, Ms Moffatt submits that Judge Bird applied the correct legal test for cessation of refugee status, took account of relevant evidence, and gave sound reasons for departing from MOJ. As such, the Secretary of State's challenge may only succeed on rationality grounds. While another judge may have approached the matter differently, it is trite law that an appellate court should not interfere with findings of fact simply because it takes a different view of the facts. This is not a case where the Judge below made findings which no reasonable judge could have made. Her findings were not irrational, and this Tribunal should find no error of law, she submits. The Judge set out the objective materials to which her attention had been drawn: the extracts from the Danish Refugee Council's report, set out above, the September 2017 and 2018 CPINs, and extracts from the UNHCR position paper and the other materials quoted by the UNHCR.

18. Ms Moffatt submits that the revocation of protection status calls for a high and exacting test. Although the test for cessation mirrors the test for the recognition of refugee status, there are significant procedural differences. The evidence must demonstrate the significant and non-temporary nature of the changes in the country of origin. There must have been permanent changes. MOJ itself, at five years old and overtaken by events, was incapable of being determinative of the individual fact-specific assessment required in the present matter.

Legal framework

Recognition as a refugee

19. Under the Refugee Convention, a person will be recognised as a "refugee" if that person:

> "…owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." (Article 1A(2), 1951 Convention, as amended by the 1967 Protocol)

The regime established by the Convention has been adopted at EU level by a number of instruments, including the Qualification Directive (2004/83/EC), which itself has been implemented domestically through the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. In addition, the Immigration Rules feature a comprehensive regime for the recognition of refugees, and associated matters.

Cessation

20. Once a person has been recognised as a refugee, the possibility of their status ceasing is dealt with by Article 1C of the 1951 Convention. Significant for present purposes is Article 1C(5). It states, where relevant:

> "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 connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality…"

Sub-paragraph (5) features an exception to the above cessation principle which is engaged in the case of a refugee under Article 1A(1) (so-called "statutory refugees", by reference to the pre-existing international instruments under which such persons were already recognised as refugees prior to the 1951 Convention, in contrast to the Article 1A(2) definition, outlined above). A person benefits from exemption from the cessation principle where they are able to invoke compelling reasons arising out of a previous persecution.

21. The "compelling reasons" exception to the cessation principle contained in the 1951 Convention is of no application to the present matter, for the following reasons.

a. First, the claimant was recognised as a refugee under Article 1A(2) and is not a "statutory refugee").

b. Secondly, it is not incorporated into domestic law or EU law in a manner which binds this Tribunal. The EU legislature has adopted a "re-cast" Qualification Directive (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted). Article 11(3) of the recast Qualification Directive applies the "compelling reasons" exception to refugees recognised under that directive. However, the United Kingdom has noted opted-in to the recast directive. See Recital (50) to the recast directive and Protocol (No. 21) to the EU Treaties. The directive does not bind Denmark either: see Recital (51). As such, the United Kingdom continues to be bound by the 2004 Qualification Directive, which does not feature a provision which corresponds to the new Article 11(3).

22. The "compelling reasons" proviso is, in practice, applied by the Secretary of State as a general humanitarian principle. See the Secretary of State's *Asylum Policy Instruction: revocation of refugee status,* version 4.0, 19 January 2016, part 4.5 (page 26, appellant's bundle). Where a person has experienced treatment and past persecution of particularly grave proportions, the policy recognises that such persons "cannot reasonably be expected to return". This is a matter of policy, rather than pursuant to the United Kingdom's obligations under the 1951 Convention, as the *Asylum Policy Instruction* makes clear: "Application of the 'compelling reasons' exception is interpreted to extend beyond the actual words of the provision to apply to Article 1A(2) refugees and reflects a general humanitarian principle."

23. In MA (Somalia) v Secretary of State for the Home Department [2018] EWCA Civ 994, the Court of Appeal (Arden LJ, Peter Jackson LJ), held that a cessation decision is the mirror image of a decision determining refugee status. This finding followed the judgment of the Court of Justice of the European Union in Abdulla and others (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08). At [2(1)], Arden LJ said:

> "the relevant question is whether there has been a **significant** and **non-temporary change in circumstances** so that the circumstances which caused the person to be a refugee have ceased to apply and there is no other basis on which he would be held to be a refugee." (emphasis added)

In the same paragraph, she held,

> "[t]he recognising state does not in addition have to be satisfied that the country of origin has a system of government or an effective legal system for protecting basic human rights, though the absence of such systems may of course lead to the conclusion that a significant and non-temporary change in circumstances has not occurred".

24. The term "significant and non-temporary" may be traced back to Article 11(2) of the Qualification Directive.

25. The Court of Appeal found support for what it termed at [47] the "symmetry" between the grant and cessation of refugee status in Abdulla: see its analysis of that decision at, for example, [53] and [54]. In adopting this approach, and presumably in reliance upon the CJEU's reasoning, the Court of Appeal departed from the conclusions of Lord Brown in Hoxha v Special Adjudicator [2005] UKHL 19 at [65] on the same point:

> "Logically, therefore, the approach to the grant of refugee status under 1A(2) does not precisely mirror the approach to its prospective subsequent withdrawal under 1C(5)…"

26. The issue was recently considered by the Upper Tribunal in AMA (Article 1C(5) - proviso – internal relocation) Somalia [2019] UKUT 00011 (IAC). At [42], Judge Plimmer highlighted the "obvious differences" that continue to exist between a grant of refugee status and a cessation decision. When making a claim for asylum; the burden of proof is on the claimant. When taking a cessation decision, the burden is on the Secretary of State. Secondly, despite the CJEU's findings which led to the Court of Appeal emphasising the symmetrical qualities of a decision to grant and a decision to cease refugee status, nothing that Lord Brown said in Hoxha concerning the need to apply a "strict and restrictive" approach to the issue of cessation has been impugned. A "high and exacting" test must be met, which contrasts with the benefit of the doubt given to asylum claimants. Although the standard of proof is the same for cessation and recognition, in the case of cessation, the changes must be of a "significant and non-temporary nature", such that the factors which formed the basis of the refugee's fear of persecution may be regarded as having been "permanently eradicated" (Abdulla at [73]).

Discussion

27. Although Ground 1 contends that the Judge "fundamentally erred in law in her approach to the issue of cessation of refugee status", we consider there to be no merit in this criticism.

28. The Judge carefully and accurately set out the relevant legal framework governing the cessation of refugee status. From [36] to [38], the judge outlined the relevant provisions of the 1951 Convention. She then summarised the commentary on those provisions contained in the UNHCR Handbook on procedures and criteria for determining refugee status. Nothing in the grounds or in the presenting officer's submissions highlights any errors in that approach. Although the grounds do seek to highlight the "different agenda" of the UNHCR, properly analysed the judge's summary of the UNHCR's own summary of the relevant legal principles features no error. For example, at [39] the judge refers to the need for there to be fundamental changes in the country, removing the basis of the fear for persecution. This correlates with the approach of the CJEU in Abdulla, and that of the Court of Appeal in MA (Somalia) on the need for there to be

significant and non-temporary changes. At [47] and [48], the judge correctly refers to the relevant provisions of the Qualification Directive, and the extracts from the Court of Justice's judgement in Abdulla which were on the point.

29. The Judge correctly identified that the country guidance case of MOJ suggested that an ordinary civilian returning to Mogadishu following a period of absence will face no real risk of persecution or harm: see [53]. At [55], the Judge noted, and emphasised, the findings in MOJ that there were no operational clan militia in Mogadishu, and that there was no discriminatory treatment, even for minority clan members. This analysis was against the background of the Judge already having recalled, at [21], the relevant paragraphs of MOJ which were said by the respondent to indicate that the required change had taken place in Mogadishu. The relevant paragraphs in MOJ were [337] – [340], [344] and [407]. Respectively, those paragraphs concern the diminished significance of clan affiliation, the "economic boom" in Mogadishu (which, according to the *New York Times*, was "spawning thousands of jobs that are beginning to absorb young militiamen eager to get out of the killing business…"), and the general risk to "ordinary civilians" (see [344]). No complaint can be made about the Judge's understanding of what would have been required by MOJ, had the Judge not found reasons to depart from it.

30. At [46], the Judge had directed herself that MOJ was binding upon the Tribunal. Quite properly, especially given the volatile and fluid nature of the security situation in Somalia as outlined by the background materials, the Judge directed herself that it was necessary to consider whether, since the judgement of the Upper Tribunal in 2014, there had been any changes in Somalia. If so, the judge noted that there may be grounds to conclude that the changes in Somalia outlined in MOJ were not as fundamental and durable as had been the case in 2014. The judge said that she had to consider whether the decision in MOJ could be distinguished by further evidence. It is clear from her examination of the post-MOJ background materials that the Judge had in mind the need to provide strong reasons, supported by cogent evidence, for departing from MOJ. No complaint may be made about this aspect of the Judge's analysis.

31. The true complaint of the respondent relates not to the Judge's approach to the legal framework for the cessation of refugee status, but rather to the way in which she applied the legal framework to the facts of the case. The essential question is whether there had been such significant and non-temporary changes that the circumstances which merited the claimant's recognition as a refugee no longer existed.

32. At [56], the Judge said that there had not been sufficient changes to merit that conclusion. Although the Judge had noted that MOJ suggested that such changes had taken place, the Judge did not consider that to be determinative of the issue. Having surveyed the relevant background information, she observed in [56] that the decision in MOJ had been

promulgated in 2014, and that the factual basis underpinning its conclusions "had largely changed" since then.

33. The presenting officer contends that the Judge's reliance on the background materials to conclude that MOJ was out of date was flawed. In our view, such a submission can only succeed if the Judge acted irrationally.

34. We do not consider the Judge's reliance on the July 2017 CPIN to have been misconceived. The Judge quoted [7.1.2] in full, and we consider that it is necessary to do so:

> "The USSD 2016 report summarised the security situation for the twelve months of 2016, 'Conflict during the year involving the government, militias, AMISOM [African Union Mission in Somalia], and al-Shabaab resulted in death, injury, and displacement of civilians. **Clan-based political violence involved revenge killings and attacks on civilian settlements.** Clashes between clan-based forces and with al- Shabaab in the Galmudug, Lower Shabelle, and Hiiraan Regions, also resulted in deaths.'" (emphasis added)

35. In our view, this paragraph supports the contention that overall in-country conditions involving the clans and clan-based political violence had worsened.

36. First, it is drawn from a trusted and reliable source: the US State Department. It is the USSD's own pithy summary of the 12 months to 2017. It merits weight and serious consideration.

37. Secondly, the USSD summary, which the respondent saw fit to cite in his July 2017 CPIN under the headings "*Security Situation – general overview*", features three strands to the general deterioration in conditions in the country. The first is conflict between the government, militias, AMISOM and al-Shabaab. The second is clan-based political violence involving revenge killings and attacks on civilian settlements. And the third is clashes between clan-based forces and al-Shabab, in three distinct regions not including Mogadishu.

38. The first and third strands in the USSD summary are not directly relevant to the Judge's findings, although they do go to the general context of lawlessness and the prevalent precarious security situation. The second strand is directly on point: clan-based political violence had increased. Revenge killings and attacks on civilian settlements had increased. This was a separate strand in the USSD's summary to the two outlined above, and was not anchored to the general risk arising from government and AMISOM clashes with al-Shabaab (first strand), and nor was it anchored to the specific areas outside Mogadishu (third strand).

39. The threshold for demonstrating that the Judge's findings of fact were irrational is high. Her reliance on this paragraph of the July 2017 report was not irrational; indeed, the approach the Judge took was entirely

consistent with the USSD's summary of 2016 as regards clan-based clashes. It may be that another Judge would have emphasised, for example, the report of the UN Under Secretary General for Safety and Security's visit in October 2016 (see [7.1.4], reporting some reductions in violence), but this Judge's reliance on the USSD's summary for the year in preference to, for example, the Under Secretary General's report, was not irrational or perverse. The respondent's Country Policy and Information notes often feature a range of background materials on a single topic. It is the role of judges to decide, in light of the evidence in the case in the round, which materials to focus upon in their decisions. As here, other background materials can be provided. Judge Bird relied on the same weighty and reliable source the respondent himself chose to rely upon to summarise the overall security situation. The second strand of the USSD summary was entirely on point, and the Judge did not fall into error in her reliance upon it.

40. The Judge then noted the Danish Immigration Service's March 2017 Report. While it is correct to say that the Judge did not have the full report, she did have available to her the extensive quotes in the UNHCR letter and at [7.1.7] of the July 2017 CPIN. Judges rely extensively on the respondent's expertise in collating background materials in his Country Policy and Information Notes. It will be difficult to sustain a criticism that a Judge relied on part of a third-party report quoted in a CPIN without recourse to the full document, in circumstances when the respondent himself, as author of the CPIN, chose to quote selectively from the very same report, and did not furnish the First-tier Tribunal with the full report. The respondent chose to quote extracts of the Danish report which stated that it is difficult to know which groups exercise effective control over certain areas. In Mogadishu, AMISOM is often described as having "effective control" during the day, but at night al-Shabaab is reported to have infiltrated those very same areas. Attributing responsibility for the poor security situation was a difficult task: "it is difficult to make a clear demarcation of what areas are under the control of what group, and there exists grey areas of mixed or unknown control…" Later, the CPIN records the high numbers of security incidents featuring "unknown" perpetrators: see [7.2.1], which records that 40% of victims of recorded violent incidents and fatalities were civilians.

41. We note that the extract of the Danish report referred to in the UNHCR letter characterises the security situation as "blurred". We reject the submissions of the presenting officer that the description in those terms prevented the judge from departing from MOJ: against the background of instability outlined above, for the security situation to be "blurred" it would have been surprising for the judge to have concluded that there had been the necessary non-temporary and durable change in the security situation since the recognition of the claimant's refugee status. The suggestion that knowing who or what actually controls Mogadishu is difficult further demonstrates the rationality of the Judge when adopting this approach.

42. Pausing here, we observe that the Judge's reliance on UNHCR materials was in the context of quoting third party background materials relied upon by the UNHCR, rather than deferring to its subjective views. No error arises from this approach.

43. The presenting officer highlighted [6.4.1] of the September 2018 CPIN. Relying in the USSD 2017 report, it states:

> 'Clan-based political violence involved revenge killings and attacks on civilian settlements. Clashes between clan-based forces and with al-Shabaab in [...] the Galmudug, Lower Shabelle, Middle Shabelle, Lower Juba, Baidoa, and Hiiraan Regions, also resulted in deaths. According to the United Nations, killings by clan militias increased compared with previous years, likely as a result of increased tensions following flawed state formation processes.

The presenting officer submits that the Judge's reliance on this paragraph was erroneous. We disagree. Again, the format of the USSD report extract is in summary form. The first sentence clearly records clan-based political violence, revenge killings and attacks on civilian settlements increasing. Although the second sentence refers to clan-based clashes with al-Shabaab in regions not including Mogadishu, the summary clearly states that such clashes, "*also* resulted in deaths", clearly implying that deaths resulted from these clashes *in addition* to the fatalities arising from the general clan-based political violence referred to in the first sentence.

44. The USSD report quoted at [6.4.1] notes that the United Nations reported that clan militia killings increased when compared with previous years, attributing the cause to the failure of state formation processes. The potential impact of failed rule of law institutions and other processes on the likelihood of there being a non-temporary and durable change was touched upon by the Court of Appeal in MA. We accept that there is no need for there to be a functioning rule of law-compliant system of governance in the country of origin. But, as Arden LJ noted in MA, "the absence of such systems may of course lead to the conclusion that a significant and non-temporary change in circumstances has not occurred" (at [2(1)]).

45. The presenting officer submitted that, to the extent there had been a deterioration in the security situation, it did not affect Mogadishu, which remained under the control of AMISOM troops. It is true that the background materials highlight the deterioration in the general security situation in the areas of South and Central Somalia surrounding Mogadishu. But there is no support in the background materials for the contention that Mogadishu is exempt or otherwise insulated from the increase in security incidents. Indeed, as outlined in the Danish report, there is no clear demarcation of responsibility for Mogadishu. Al-Shabaab infiltrates the city at night. Clan-based clashes and extreme violence have been noted as taking place country-wide, without distinction. There is no support for the proposition that Mogadishu remains exempt from the risk

of clan-based violence which led to the appellant's initial recognition as a refugee.

46. The picture that emerges from the contemporary background materials marks a departure from the *New York Times* description quoted at [29], above, and also at [344] of MOJ. The "killing business" from which the article said many young men sought to flee seems very much to be back in action.

47. We were taken to extracts AMA as authority for the proposition that changes may be regarded as non-temporary and durable even if they are isolated to particular parts of the country. We consider this submission to be of little assistance, primarily as we have found that the Judge did not act irrationally in her reliance on the background materials when concluding that Mogadishu would not be safe.

48. There is a second reason why AMA is of limited assistance in this regard. We consider AMA's support for this proposition to be more theoretical than practical. The headnote states at (2):

> "(2) Changes in a refugee's country of origin affecting only part of the country may, in principle, lead to cessation of refugee status, albeit it is difficult to see how in practice protection could be said to be sufficiently fundamental and durable in such circumstances."

49. At [47], Judge Plimmer said:

> "It is difficult to envisage how and in what circumstances a well-founded fear of persecution can be said to be "non-temporary", "significant" or "permanently eradicated" in a country for a particular person, wherein it is accepted that… the person cannot safely move around the country. The necessary requirement for the changes to be fundamental and durable is most likely to be absent. It follows that the availability of internal relocation is generally unlikely to be a material consideration when applying article 1C(5) of the Refugee Convention or article 11 of the [Qualification Directive]".

50. Applied to the present matter, even if the Judge had erred in relation to the safety of Mogadishu, the well-documented and remaining difficulties arising from clan militia, inter-clan violence, and the general security situation elsewhere in Somalia mean that it is very unlikely that the Judge could properly be said to have erred in relation to the wider position across the remainder of Somalia.

Conclusion

51. In our view, the Judge rationally and accurately surveyed the security landscape in Southern and Central Somalia and Mogadishu, finding that the clan-based persecution which first caused the claimant to be recognised as a refugee continued to exist. While this Tribunal's decision in MOJ suggested that matters had changed by 2014, the Judge correctly considered whether, in the intervening five years, any changes had taken place. The background materials permit the legitimate view to be taken

that there has been a deterioration in the general security situation since then. The sources relied upon by the Judge to reach that conclusion were relevant, and she did not misunderstand them or otherwise act irrationally. She did so having had in mind the correct authorities governing the revocation of protection status. In our view, her conclusion must stand.

52. In light of these findings, it is not necessary for us to consider whether the Judge erred in relation to her assessment of the Article 3 issue, which was posited in the alternative. The appeal is dismissed.

Notice of Decision

This appeal is 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 their 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 *Stephen H Smith* Date 19 June 2019

Upper Tribunal Judge Stephen Smith