Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00114/2016

THE IMMIGRATION ACTS

Heard at: Field House
On 30 October 2017, 3 October and 3 December 2018

Decision & Reasons Promulgated
On 4 March 2019

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

MM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K McCarthy, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr T Lindsay & Mr I Jarvis, Senior Presenting Officers

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008
Unless and until a Tribunal or court directs otherwise, the appellant herein is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The appellant is a national of Somalia, born in July 1988. He entered the United Kingdom on 15 December 1995 and on 7 January 1998 was granted indefinite leave to remain as a refugee (as a dependent on his aunt who had previously been granted indefinite leave to remain as a refugee in March 1995).

2. On 3 December 2008, the appellant was convicted for conspiracy to inflict grievous bodily harm and sentenced to a total of seven years' imprisonment. He was sentenced to a further twelve months' imprisonment on 30 August 2013 for possession of an offensive weapon, and fourteen months imprisonment on 25 October 2013 for affray.

3. Having informed the appellant of his intention to revoke his refugee status by way of a letter dated 18 November 2015 (served in January 2016), the respondent took such action on 5 July 2016. Thereafter, in a decision dated 18 August 2016 but served under cover of a letter of 22 August, the respondent refused the appellant's protection and human rights claims, which triggered a right of appeal to the First-tier Tribunal ("FtT"). On the following day a deportation order was signed in the appellant's name.

Decision of the FtT

4. The appellant's appeal was heard by First-tier Tribunal Judge Amin on 16 January 2017 and dismissed on all grounds in a decision sent to the parties on 24 February 2017.

5. Before the FtT the appellant relied upon personal characteristics which it was said, taken either cumulatively or in isolation, would lead to his removal breaching Article 3 and Article 8 ECHR. These included, the length of time since he was last in Somalia, his inability to speak the Somali language with any fluency or at all, his lack of family and clan connections in Somalia, and the unwillingness and inability of his UK based relatives to financially support him in Somalia.

6. The FtT, *inter alia*, found as follows:

> "68. I accept that the appellant left Somalia when he was 7 or 8 years old and he has not returned. He has been absent from Somalia for twenty years. His entire family is in the UK and he has no clan connections in Somalia. The appellant suffers from dyslexia but he has not provided any evidence to show what assistance he requires with this disability. On the contrary, the expert report states that he is above normal intelligence (as an underestimate). I do not find that his dyslexia will prevent him from securing a livelihood in Mogadishu.
>
> 69. I also reject the family's evidence today that they would not be able to support him financially on return to Mogadishu because they fear the money would go to terrorists. This is speculation on the part of the family. The appellant has family members who are running businesses in the UK and there is no reason put forward why they would not be able to support

him on return. The appellant initially spoke the language of the country and it may take him time but he will be able to learn the language despite his dyslexia. The appellant has trained in prison to be a motor mechanic and he will be able to utilise such skills to obtain a job.

70. In the alternative, the appellant can also relocate to Somaliland contrary to his Counsel's submissions. The appellant's own expert has stated that it is feasible for him to relocate so long as he has family support. I have concluded that it is reasonable to expect his large extended family to support him on return in Mogadishu or Somaliland.

71. In coming to my conclusions on the revocation of the appellant's refugee status I have taken into account the appellant's solicitor's submissions and the UNHCR letter dated 8 April 2016. However, having carried out a full assessment of the appellant's situation, I consider that the improvements in Somalia (relying on MOJ) since the appellant was recognised as a refugee are fundamental and durable within the meaning of Article 1C(5) of the 1951 Convention.

72. I have already noted above that in the light of the appellant's convictions his deportation order stands. Criminality does not amount to a change of personal circumstances under paragraphs 339A(i)–(iv) or a review may highlight that protection is no longer needed. The appellant's own background information EASO country report notes that the number of incidents in Mogadishu – especially bomb attacks – is decreasing, albeit still high. UNHCR in Somalia also noted in May 2015 that Al-Shabab wants headlines and therefore carries out spectacular attacks against high profile targets. Therefore they do not target ordinary civilian citizens like the appellant. MOJ noted the reduction in casualties amongst civilians since 2011.

73. MOJ also recognised that there are no clan militias in Mogadishu, no clan violence and no clan based discriminatory treatment, even for minority clan members. It also recognised that there will be no risk of harm such as to require protection under Article 8 of the ECHR or Article 15(c) of the Qualification Directive for an ordinary civilian, like the appellant, in Mogadishu. These are clear and fundamental changes as to why the appellant was granted refugee status previously."

Permission to appeal to the Upper Tribunal

7. Upper Tribunal Judge Canavan granted permission to appeal to the Upper Tribunal in a decision of 11 September 2017, for the following reasons:

"2. The grounds of appeal are not well focused and in places concentrate on matters that are likely to be immaterial issues (such as the exceptions to deportation, which do not form a significant aspect of the assessment in light of the sentence of more than four years' imprisonment). Although many of the judge's findings were unarguably open to her to make, and there is some question mark as to whether some of the matters highlighted in the grounds would have made any material difference to the outcome of the appeal, it is at least arguable that the judge might not have given adequate consideration to some aspects of the evidence that supported the

appellant's position, including aspects of the expert report and the evidence given by some of the witnesses. The grounds do at least justify further consideration at a hearing."

Setting aside the FtT's decision

8. At a hearing of 30 October 2017, I set aside the FtT's decision. A written decision in the following terms was sent to the parties on 14 November 2017.

> "[9] It is first necessary to set the challenges to the First-tier Tribunal's decision in the context of the most recent Country Guidance decision relating to Somalia i.e. MOJ & Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), the headnote to which reads:
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> > "(i) …
> >
> > (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 or risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al Shabaab or by Al Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country.
> >
> > (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.
> >
> > (iv) The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab's resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.
> >
> > (v) It is open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of "collateral damage" in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so.
> >
> > (vi) There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West.

(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.

(xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real

possibility of having to live in conditions that will fall below acceptable humanitarian standards."

[10] Moving on, central to the first ground is evidence contained in an "*Expert Case Report*" authored by Dr Bekalo. Such evidence was, at the time of the first hearing before the Upper Tribunal, uncontentious both in its reference to the appellant being a member of the Isaaq clan and in its assertion that whilst the Isaaq clan is one of the major clans of Somalia it is not a majority clan within Mogadishu or within the wider mainland of southern Somalia. The following aspect of Dr Bekalo's evidence has, however, assumed significance for the instant purposes:

> "[2.2] … [There is] Mistrust and animosity between the Isaaq clan and the majority of the rest of Somalia's powerful clan groups. From what I observe, rightly or wrongly, the southerners see Somaliland as the main cause for the breakup of Somalia and the chaos that followed. … one can infer that it would be particularly difficult for Isaaq clan members to return and settle in Mogadishu or elsewhere in southern Somalia. In any case, I do not think that there would be any significant number of Isaaq clan members living in Mogadishu or southern Somalia at the present time. …"

[11] The First-tier Tribunal summarises Dr Bekalo's evidence at [61] to [64], focusing on the evidence relating to the risks to the appellant from Al-Shabab. No reference is made to the evidence set out above. Consideration by the First-tier Tribunal of Dr Bekalo's evidence regarding Mogadishu and southern Somalia culminates in the following, at [64]:

> "Interestingly, his conclusions are that "… it also seems to me to be plausible that the Appellant could be mistreated or potentially exploited by the Al-Shabaab or by other powerful groups if he was returned to Mogadishu or elsewhere in Somalia…" He has based this opinion on newspaper articles…"

[12] Mr Lindsay submits that the absence of any reference by the First-tier Tribunal to the mistrust and animosity by members of the majority clans in southern Somalia towards members of the Isaaq clan must be viewed in the context of the conclusions in MOJ – and in particular those summarised at paragraphs (viii) and (xi) of the headnote thereto.

[13] It is trite that Dr Bekalo's evidence must be viewed through the prism of the country guidance decision but, as Mr Lindsay accepts, that decision does not deal specifically with the Isaaq clan. The reasons and conclusions in MOJ are clearly not determinative and further analysis was required of the First-tier Tribunal.

[14] The First-tier Tribunal concluded, at [69], that the appellant would be able to utilise his skills as a motor mechanic to "*obtain a job*". Dr Bekalo's evidence (set out at [10] above) goes, *inter alia*, directly to this issue. Insofar as there is any analysis by the First-tier Tribunal of the role that clan membership would likely play in the ability of the appellant to obtain employment it is to be found in its reference to MOJ at [73], that there is "*no clan violence and no clan based discriminatory treatment, even for minority clan members.*" Clearly, Dr Bekalo's evidence of the animosity towards, and mistrust of, the Isaaq clan by members of the majority clans in southern Somalia is relevant to the assessment of the issue

of whether the Isaaq clan are an exception to the general conclusions in MOJ that there is no clan-based discrimination. Whilst I appreciate that the First-tier Tribunal was not required to detail every aspect of the evidence before it, it was in my conclusion required to engage with this aspect of Dr Bekalo's evidence and its failure so to do amounts, in my conclusion, to an error of law.

[15] Mr Lindsay submits, for two reasons, that even if such an error is established it is not an error capable of affecting the outcome of the appeal. First, it is said, the Tribunal concluded that the appellant would have the financial support of his UK based family members if returned to Mogadishu (at [70]) and thus it is not reasonably likely that he would be required to live in conditions which below those permitted by article 3 ECHR even if he did not obtain employment. Second, the First-tier concluded in the alternative that the appellant could return and live in Somaliland.

[16] A consideration of this submission requires an analysis of the second of the grounds of challenge, summarised at paragraph 7(ii) above i.e. the Tribunal erred in its conclusion that the appellant's UK based family would be able and willing to support the appellant upon his return to Somalia (whether this be to Mogadishu or to Somaliland)

[17] The appellant and his witnesses gave dual fold reasons for asserting that there would be no provision of support from the UK for the appellant in such circumstances. There was said to be an unwillingness to provide such support because of a fear that the monies would end up in the hands of terrorist organisations, and an inability to provide such support because of the particular financial circumstances of the UK based family members (see, for example, [31], [34], [38] of the First-tier Tribunal's decision).

[18] The First-tier Tribunal rejected the evidence of unwillingness on the part of the appellant's family members as 'speculation'. It is then concluded, at [69], that the appellant has family members in the UK who are "*running businesses*" and that "*no reason [had been] put forward why they would not be able to support him on return*".

[19] I can find nothing in the documentation before the First-tier Tribunal, nor in the summary of the oral evidence set out in the First-tier Tribunal's decision, to support the conclusion that any of the appellant's family members "run businesses" in the UK. Two of the appellant's cousins gave evidence. One is employed as a graphic designer and one is a taxi driver. Both gave evidence of the fact that they have families of their own to support in the UK and that they have no spare money. The appellant's mother gave evidence of her multiple health problems, low income and her inability to financially support her son.

[20] Consequently, contrary to what is said by the First-tier Tribunal at [69] of its decision, the appellant's witnesses did provide reasons in support of their assertion that they would not be able to financially assist the appellant upon his return to Somalia. The First-tier Tribunal did not engage with the explanations provided and failed to give any reasons for rejecting such evidence. I do not accept that an engagement by the First-tier Tribunal with the evidence would inevitably have led to the same conclusion and I, therefore, conclude that the First-tier Tribunal's conclusion that the appellant would have financial support available to him upon return to Somalia is flawed by legal error.

> [21] This conclusion not only impacts of the First-tier Tribunal's findings in relation to Mogadishu, but also on its conclusion that the appellant could return to, and live in, Somaliland, as is clear from the terms of its conclusion at [70]:
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> > "In the alternative, the appellant can also relocate to Somaliland contrary to his Counsel's submissions. The appellant's own expert has stated that it is feasible for him to relocate so long as he has family support. I have concluded that it is reasonable to expect his large extended family to support him on return in Mogadishu or in Somaliland." (emphasis added)
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> [22] In any event, this finding is of itself also flawed by legal error for a further reason. At [64] of its decision the First-tier Tribunal summarises the evidence given by Dr Bekalo's in relation to the appellant's return to Somaliland:
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> > "Dr Bekalo is more positive and supposes that the appellant could or should relocate to Somaliland as there were no Al-Shabab insurgents in Somaliland and the security situation can be described as far better than the rest of Somalia. He accepts that local family support or clan support would be essential for the appellant to survive in Somaliland."
>
> [23] Dr Bekalo in fact concluded that *"in such a situation* [i.e. return of the appellant to Somaliland] *local sociolinguistic and cultural knowledge as well as clan family support network are critical"*. Nowhere thereafter in his report does Dr Bekalo conclude, absent all the aforementioned features being present, that it would be feasible for the appellant to return to Somaliland. On the face of its decision, the First-tier Tribunal has once again failed to engage with relevant evidence given by Dr Bekalo."

9. The aforementioned errors were sufficient to lead to the conclusion that the First-tier Tribunal's decision must be set aside. I directed that the decision would be re-made by the Upper Tribunal and that the scope of the re-making would be limited to a consideration of whether the appellant's deportation would breach Article 3 ECHR (Ms McCarthy having accepted that the appellant could not succeed on an Article 8 ECHR ground absent also succeeding on Article 3 ECHR).

Re-making of the decision

Introduction

10. It is regrettable that there has been such a lengthy delay in the re-making of this decision. The case was initially timetabled to allow an opportunity for Dr Bekalo to provide a further report – the further hearing being scheduled to take place on 19 March 2018. This hearing was adjourned upon the appellant's application, it being said at that time that the appellant's lawyers had good reason to believe that the appellant was not from the Ishaaq clan as originally believed but instead of the Ogaden clan. The Tribunal gave the appellant an opportunity for this issue to be resolved. At a subsequent Case Management hearing the matter was listed to be heard on 25 July 2018, in order to accommodate the appellant's wish to obtain further expert evidence. This date was vacated upon the SSHD's request because of the late service of evidence by the appellant, which led to their being insufficient time for the SSHD to undertake a proper consideration of the evidence prior to the date of

hearing. The next available date for hearing was the 3 October. On this date oral evidence was provided by the appellant and a number of additional witnesses; however, a new issue arose which required further consideration by the parties. Consequently, the appeal could not be brought to a resolution on that date and the matter was adjourned part heard and re-listed on 3 December. On that date no further oral evidence was heard, and both parties made submissions.

11. In coming to my conclusions below I have considered all the evidence in the round, including the evidence that was before the First-tier Tribunal. In addition to the witness evidence and general background documentation relating to Somalia, the appellant has produced two reports from Dr Bekelo, dated 7 December 2016 and 8 June 2018. The former of these reports was before the First-tier Tribunal and is drawn on the basis of the appellant's membership of the Ishaaq clan. The latter proceeds on the basis of the appellant's membership of Ogaden clan. Dr Bekalo identifies his expertise in matters relating to the "*Horn/East of Africa*", including Somalia. He has authored numerous academic publications on the region and discloses in his CV that he last visited Somalia in 2014. It is not specifically stated therein that he visited Mogadishu at this time, although it is stated that he has undertaken frequent field research in "*Southern Somalia*". The appellant also relies upon a "*Psychiatric report*" authored by Dr Hajioff, a consultant psychiatrist. Dr Hajioff assessed the appellant on 7 December 2016 and authored the report the following day.

Matters not in dispute

12. There is consensus between the parties as to the appellant's nationality, age, his date of entry to the UK and his immigration and criminal history (as to which see paragraphs 1-3 above). The First-tier Tribunal accepted that the appellant suffers from dyslexia, and this has not been further disputed before the Upper Tribunal.

13. Despite the case thus far proceeding on the basis that the appellant would be considered to be from the Ishaaq clan in Somalia, it is now agreed that this is not the case and that as a consequence of the appellant's father's being of the Ogaden clan the appellant is also to be considered as belonging to this clan.

The threshold for the Article 3 ECHR consideration

14. Article 3 of the Human Rights Convention provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"

15. In Said v SSHD [2016[Imm AR 1084, a case relating to a return to Somalia, Burnett LJ (as he then was), with whom the other members of the Court agreed, observed that Article 3 was intended to protect persons from their civil and political rights, not their social and economic rights. The court concluded that the return of a person who was not at risk of harm because of armed conflict or violence would not in the case of economic deprivation violate Article 3 unless the circumstances were such as those identified in N v UK [2005] 2 AC 296. At [18] it was said:

> "These cases demonstrate that to succeed in resisting removal on art 3 grounds on the basis of suggested poverty or deprivation upon return which are not the responsibility of the receiving country or others in the sense described in para 282 of *Sufi and Elmi*, whether or not the feared deprivation is contributed to by a medical condition, the person liable to deportation must show circumstances which bring him within the approach of the Strasbourg court in the *D* and *N* cases."

16. This approach was recently followed by the Court of Appeal in MA (Somalia) v SSHD [2018] EWCA Civ 994, and it is the approach I take in the instant matter. Article 3 principally applies to prevent expulsion where the risk of 'ill treatment' in the receiving country emanates from intentionally inflicted acts of the public authorities or from non-state bodies when the authorities are unable to afford the applicant the appropriate protection. It is only if "*the source of the risk of the proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country*" (D at [49]), that consideration turns to whether there are "*exceptional circumstances*" of the type identified in D and N.

17. To further expand, the ECtHR in Sufi and Elmi v United Kingdom (Applications 8319/07 and 11449/07) (2012) 54 EHRR 9 identified that it was a relevant component of the decision in N v United Kingdom that it could ***not*** be said that the harm N was at risk of suffering emanated from an intentional act or omission of public authorities or a non-State body [281]. In Sufi and Elmi the Court were faced with a different situation, where the harm likely to be faced by the applicants upon return to Somalia was found to derive, predominantly, from the direct and indirect actions of the parties to the conflict in that country [282]; this being in the context of there being no functioning state in Somalia. It was on this basis that the Court distinguished the case from N v United Kingdom.

18. However, there is nothing in the evidence before me which leads me to conclude that the circumstances that presently pertain in the IDP camps or in the Mogadishu, and which it is said would lead the appellant to deprivation and destitution upon removal there, were brought about by conflict or, more generally, are the result of the actions or omissions of the Somali authorities. I conclude that the appropriate threshold is that identified in paragraph 18 of Said.

Discussion on Re-making

19. Turning then to the facts of the instant case. I accept that in Somali culture the appellant is considered to be a member of the Ogaden clan, which is one of the three major sub-clans of the Darod clan. The Darod clan is an ethnic majority (noble) clan, with members spread throughout Somalia. The Ogaden sub-clan are primarily found in southern Somalia, including Mogadishu. The background evidence identifies that between 7% and 10% of the population of Mogadishu are from the Darod clan and that the President of Somalia is also from that clan.

20. In his most recent report of 8 June 2018 Dr Bekelo confirms that "*…the appellant would not face socio-economic prejudice or discrimination on the basis of being from the Ogaden*". He further states, consistently with the conclusions of the Tribunal in MOJ, that Al-Shabaab insurgent groups no longer fully control major towns and cities such as Mogadishu, but so approach high ranking military and government officials as well as journalists in cities and towns. According to Dr Bekalo, it is doubted that Al-Shabaab chase ordinary people to forcibly join them from areas that they do not control. Al-Shabaab still carry out bombings and other attacks in Mogadishu and other towns and cities and some civilians have been killed. It is not asserted, however, that the level of violence in Mogadishu is of itself near sufficient to breach Article 3 ECHR and in any event looking at the evidence for myself I conclude that it comes nowhere near sowing that there is a real risk to the appellant from Al-Shabaab.

21. I now move on to consider what, in reality, was the substance of the appellant's case before the Upper Tribunal; that in Mogadishu he would be required to live in conditions of destitution such that the Article 3 threshold would be breached.

22. In considering this issue I take matters in chronologically. The initial consideration must therefore be what circumstances would meet the appellant in the immediacy of his arrival in Mogadishu. In order to properly determine this matter, I need first identify what financial resources the appellant would have at the point of, or shortly after, his arrival there.

23. For the reasons given below, I conclude that at the point of his return, or shortly thereafter, the appellant would have available to him monies provided to him by the UK authorities.

24. The Tribunal in MOJ did not consider the issue of the availability of funds from the UK authorities in any detail, merely observing at [423] that:

> "Financial assistance from the Home Office may be available to voluntary returnees, in the form of a grant of up to £1,500 and may of significant assistance to a returnee."

25. Such funds are potentially available through the operation of the Facilitated Returns Scheme ("FRS"), operated through the Home Office. The relevant guidance explaining the Facilitated Returns Scheme for foreign national offenders is found in a 35-page document headed: "*The Facilitated Returns Scheme (FRS), version 8: published for Home Office staff on 3 October 2016*". The introduction to this document identifies that the FRS was established on 12 October 2006 to make the early removal for foreign national offenders (FNOs) easier. The primary aim of the scheme is to encourage FNOs to leave the UK at the earliest possible opportunity.

26. An application under the FRS can be made by telephone or by informing an immigration officer or member of prison staff. The making of an application is not, however, treated as being compatible with pursuing an appeal against deportation and if the appeal process is still ongoing an applicant is required to sign a "*disclaimer*

form" withdrawing such appeal. This, in my view does not, of itself, prevent an appeal being determined on the basis of monies being available from the FRS upon return for any given applicant, and Ms McCarthy did not seek to argue that such an approach should be taken.

27. An applicant will usually receive a reply within 72 hours of an application being made. Page 12 of the FRS guidance identifies a number of *"categories of foreign national offender"* that fall outwith the scope of the FRS. In such circumstances the guidance provides that an application made by such person under the FRS *"will be rejected"*. It is quite conceivable that the appellant would, in ordinary course, fall within such categories. To this end, between the hearings of 3 October and 3 December 2018 Mr Jarvis sought clarification of such matters from the relevant department, the consequence of which led to the following undertaking being given to the Tribunal in writing:

> "In response to the UT's questions about the FRS and the A's eligibility, the SSHD is able, in this case, to give the undertaking that on application the A will be fully accepted onto the scheme. The amount of the grant is described both in the Reasons for Deportation Letter and the current FRS guidance as £750…
>
> The A will therefore be given an initial £500 and once he has returned to Mogadishu he can contact IOM who will then inform the Home Office which leads to the uploading of the further £250."

28. In these circumstances, I conclude that the appellant will have £500 (or the equivalent) available to him at the point of return and be able to access a further £250 (or equivalent) shortly thereafter – there being no issue taken by Ms McCarthy relating to the ability of the appellant to contact the IOM after arrival.

29. Mr Jarvis asserts that in addition to the abovementioned £750 the appellant will also have available to him in Mogadishu monies obtained both from his UK based family members and from non-family members of his clan living in the UK. I reject this submission.

30. The appellant's UK based family was described before the FtT as including his parents, five brothers, 14 cousins as well as nephews and nieces. I have written and oral evidence before me referring to the inability and/or unwillingness of the appellant's parents, two of his brothers and three of his cousins to assist the appellant if he were to be returned to Somalia. Having considered this evidence, I accept that the appellant's parents do not have the financial wherewithal to be able to provide him with financial assistance. The appellant's father receives a state pension and his mother works just 16 hours per week as a carer. In addition, two of the appellant's cousins have large families of their own to support, a third has student loans to pay off and two brothers referred to are both currently without employment. I accept none of these family members could assist the appellant if he were to be returned to Mogadishu. It is further asserted by a number of relatives that they *"do not trust the remittance services"* in Somalia, which was explained in oral evidence as a fear that some of the monies sent through remittances services maybe diverted to assist Al

Shabaab. This, is said amongst other things, could lead to the British authorities taking an adverse interest in them – something they understandably want to avoid.

31. As to the possibility of financial support from other relatives, Mr Jarvis submits that the absence of evidence from these relatives should lead to the Tribunal to conclude that the appellant has not established that they would unable or unwilling to assist him financially, such evidence being reasonably available to the appellant but not provided. I do not accept that such a leap can be made and, to the lower standard, I am prepared to accept the evidence given by the appellant in this regard.

32. I turn next to Mr Jarvis' submission that the appellant could approach members of his clan in the UK in order to secure financial support from them upon his return to Somalia. This submission is supported, it is said, by a passage in an FSNAU report from June 2013 titled "*Family Ties: Remittances and Livelihoods in Puntland and Somaliland*", which relays responses to survey about the "*obligation to give*". However, in my view the leap from the results of a survey in 2013 relating to Puntland and Somaliland to the potential obligation of clan members in the UK to provide financial support to the appellant (whom they do not know) if he were to be returned to Mogadishu is simply too great. It is entirely speculative to assume that the appellant could obtain assistance from non-familial clan members living in the UK in the manner suggested by Mr Jarvis, and I proceeded on the basis that he could not.

33. Moving on, the appellant will be returned to Mogadishu airport. I have not been directed to any evidence suggesting that he will, thereafter, have any difficulty in travelling between the airport and an area of Mogadishu which is largely inhabited by the Darod clan, or indeed any other area of the city.

34. As to the availability and cost of accommodation once he has made this journey, this must be considered in stages. Consideration must first be given to whether the appellant can obtain accommodation (other than in an IDP settlement) in the immediacy of his return. The analysis of this issue is not impinged upon by the assessment of the likelihood of him obtaining employment, given that he will return with £500 immediately available to him.

35. The appellant left Mogadishu over 23 years ago, when he was a small child. I accept he has no ties to Mogadishu and in particular he has no familial connections there to support him in his attempts to obtain accommodation upon return. Nor is there evidence that he would be able to draw upon any connections his UK based family members may have with persons living in Mogadishu. Although it may be that clan membership would be of some assistance to some returnees in finding and securing accommodation in a majority Darod area, I do not accept that this will be so in the appellant's case. At present, he is effectively estranged from his clan. Nevertheless, the evidence does not demonstrate that clan assistance is required in order to secure accommodation, either within or outwith an area populated by Darod clan members.

36. Neither party has produced satisfactory evidence as to the current cost of rental accommodation in Mogadishu. The only evidence that was drawn to my attention by the appellant in this regard is found in two documents drawn from a website named "*Numbeo.com*". I am not told what the purpose of this website is, nor how it collects and authenticates the data produced. The two documents from this website are both from July 2018. The first refers to "*July 2018, prices in Mogadishu*" and the second provides a comparison between Mogadishu prices and London prices. The former of these documents states that the price range for an apartment in the city centre ranges between $90 and $250 and for an apartment outside the city centre between $30 and $80. The latter document states that the rental price for a one-bedroom apartment in the city centre is "*£101.05 ($131.87)*" with the cost outside the city centre said to be "*£39.65 ($51.67)*". I proceed on the assumption that this is said to be the monthly cost, although this is not specifically stated to be the case in the documents before me.

37. Mr Jarvis also draws attention to two documents relating to the cost of accommodation in Mogadishu, the most recent being a Landinfo Country of Origin report dated 1 April 2016, in which the following is said:

> "With a three-bedroom apartment as a starting point, sources in Mogadishu said this costs between USD 100 and 250, depending on standard and location. The most expensive was assumed to be in the district Wadajir in the area near the airport. It was stated that one has to pay USD 40 to 80 per month for simpler housing, such as a dorm or a so called iron sheet house."

It is further concluded, in the same report, that:

> "The most common way to acquire housing in Mogadishu is to enter a rental agreement. …The sources said that there are no difficulties finding housing in the various districts and within the various segments of the housing market."

38. Whilst the evidence produced by the parties as to the cost of a small apartment or "*simpler housing*" (which is all the appellant would require) is broadly consistent, neither party has produced evidence, even historic, as to the cost of accommodation in the particular areas populated in the majority by the Darod clan. I remind myself that the burden of proof is on the appellant and, in such circumstances, I proceed on the basis that accommodation would be available to the appellant in such areas and that its cost (for simpler housing) is between $40 and $80 per month.

39. As to the costs of living in Mogadishu (other than accommodation costs) once again the appellant relies upon information found on the Numbeo.com website and the SSHD on information reported in the Landinfo report. As to the latter, it is reported that an IOM representative "*…believed that USD 400 a month would be sufficient to maintain a <u>family of four</u> in terms of food <u>and rent</u>…*" (my emphasis) and that such persons would be viewed as "*tolerably well off*". Turning to the first of the documents from the Numbeo.com website, this provides a cost range for various items, whereas the second document (comparing London to Mogadishu), provides a single cost point in both sterling and US Dollars. By way of example, a litre of milk is said to

cost between $0.7 and $2 in the first document and "£1.13 ($1.47)" in the second. 1.5 litres of water is said to cost between $0.2 and $1 or ("£0.54 ($0.7)), 500g bread between $0.3 and $2 ("£0.77 ($1)") and a kilogram of rice between $0.8 and $1.4 ("£0.7 ($0.91)"). The cost of utilities ("*Electricity, Heating, Cooling, Water, Garbage*") for an 86 sqm apartment is said to range from $20 and $80 per month in the first document and in the second document is identified to be "£40.93 ($56.39)". As previously indicated, there is no evidence as to the source of such information, or why Numbeo.com obtained and published it or, indeed, why the figures in the second document do not correlate to those in the first. This information does however, particularly when taken with the information in the Landinfo report, provide a broad idea of the cost of living in Mogadishu and I proceed on the basis of the information therein.

40. I further observe that the appellant's parents each give written evidence that the cost of renting accommodation in Mogadishu is £300 per month and that the cost of living is at least £300 per month, in addition to the cost of accommodation. During oral evidence the appellant's mother confirmed that such information came from watching Somali TV in the UK. The appellant's father did not give oral evidence or provide any explanation as to how he concluded that the costs were as he identified. In all the circumstances I attach little weight to this evidence and, insofar as it is inconsistent with other evidence before me, I reject it. No detail was given as to the type and location of accommodation it was said would cost £300 per month, and the evidence regarding living costs is too broad to be of assistance, particularly given the other evidence put before me by the parties.

41. Drawing all this together, in my conclusion the appellant has not demonstrated that there is a real risk that he would not be able find simple accommodation in Mogadishu within the scope of his financial resources in the immediacy of his return, even taking into account that he would require sufficient funds left over to pay for the goods and services he requires in order to ensure that his living circumstances do not fall below that which it is acceptable in Article 3 terms. Indeed, once he has acquired the full £750 that he is entitled to under the FRS, the appellant would have sufficient funds to live in conditions significantly above those that would lead to a breach of Article 3 for at least 4-5 months and, in all likelihood, longer than that, without access to additional financial resources.

42. Turning then to the possibility of the appellant obtaining employment upon return to Mogadishu in order to supplement the resources he would already have at his disposal. In MOJ the Tribunal said as follows:

> "[345] It is beyond doubt that there has been huge inward investment, large-scale construction projects and vibrant business activity. Land values are said to be "rocketing" and entrepreneurial members of the diaspora with access to funding are returning in significant numbers in the confident expectation of launching successful business projects. The question to be addressed is what, if any, benefit does this deliver for so called "ordinary returnees" who are not themselves wealthy businessmen or highly skilled professionals employed by such people."

The Tribunal went on to consider evidence given by Dr Hoenhe to the effect that a vast majority of people in Mogadishu are struggling to survive, concluding:

> "[349] This is a view that is not altogether easy to understand and we are unable to agree with it. The evidence is of substantial inward investment in construction projects and of entrepreneurs returning to Mogadishu to invest in business activity. In particular we heard evidence about hotels and restaurants and a resurgence of the hospitality industry as well as taxi businesses, bus services, drycleaners, electronics stores and so on. The evidence speaks of construction projects and improvements in the city's infrastructure such as the installation of some solar powered street lighting. It does not, perhaps, need much in the way of direct evidence to conclude that jobs such as working as building labourers, waiters or drivers or assistants in retail outlets are unlikely to be filled by the tiny minority that represents "the elite"".

43. The Tribunal summarised its conclusions on the issue of the availability of employment opportunities in Mogadishu in the following terms:

> "[351] …there is evidence before the Tribunal, identified by Dr Mullen, to the effect that returnees from the West may have an advantage in seeking employment in Mogadishu over citizens who have remained in the city throughout. This is said to be because such returnees are likely to be better educated and considered more resourceful and therefore more attractive as potential employees, especially where the employer himself or herself has returned from the diaspora to invest in a new business.
>
> [352] For those reasons we do not accept Dr Hoehne's evidence that it is only a tiny elite that derives any benefit from the "economic boom". Inevitably, jobs have been created and the evidence discloses no reason why a returnee would face discriminatory obstacles to competing for such employment. It may be that, like other residents of Mogadishu, he would be more likely to succeed in accessing a livelihood with the support of a clan or nuclear family.
>
> [407(h)] …it will be for a person facing return to Mogadishu to explain why he should 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 way."

44. The evidence before me supports the continued vibrancy of the economy in Mogadishu with reconstruction and the service industries being at the forefront of the boom. The issue though is how this instant appellant would fare if returned to Mogadishu.

45. In his most recent report, of 8 June 2018, Dr Bekalo observes as follows: (although he does so without setting the observations in the context of the conclusions in MOJ):

    (i) Although one may suppose that the appellant would likely get support and protection from his fellow Ogaden members, this is not always the case;

    (ii) Without established in-country family/clan support, the appellant is basically an outsider and is unlikely to get automatic and meaningful

support and protection from other Ogaden clan members, particularly by merely mentioning his name or through personal introduction;

(iii) The fact that the appellant barely knows the Somali language and culture or possesses any meaningful skills, given that he has lived in the west for over two decades from a young age, further complicates his chance of integration and survival in Somalia.

46. Looking at the other evidence before me, I note that in its 2016 report Landinfo identify that statistics about the labour market conditions in Somalia are mainly compiled by UN agencies and that the most comprehensive report in this field was published in February 2016 by the IOM (a report that has unfortunately not been put before me). The issue of labour recruitment, as reported by the IOM, is though summarised in paragraph 5.4 of the Landinfo report in which it is said that for unskilled labour, potential workers wait in Bakara market between 8am and 11am each morning and meet up with those people who need labour for various tasks. Agreements for short or long-term assignments are entered into there and then. The report does not indicate that this recruitment process is clan based or clan biased.

47. This evidence is consistent with the conclusions both in MOJ and the reported decision of AAW Somalia [2015] UKUT 00673, it being said in the latter decision:

> "[64(e)]…As was made plain in *MOJ & Ors,* whilst it may assist a person seeking to find work to have the sponsorship of an established family network of majority clan, absence of that support was not a disqualification to access to work."

48. Ms McCarthy submitted that given the appellant can only *"speak the odd Somali word and basic expressions"* and is far from fluent that he would have difficulty in accessing the labour market in Mogadishu. Mr Jarvis submits that: (i) it has not been established that the appellant does not speak Somali and, in any event; (ii) the inability to speak Somali is not a disadvantage in the employment market.

49. Taking these submissions in turn. The appellant left Somalia at a young age and, I accept, was never schooled there. It is not said, however, that he was anything other than fluent in the Somali language upon his arrival in the UK or that he spoke English prior to his arrival in the UK. The appellant's claim is that upon his arrival here he lived with his aunt who *"spoke English most of the time"* and did not speak Somali very well. The appellant also started schooling in the UK shortly after his arrival (aged 7). It is said that as a consequence he has lost his ability to speak Somali. Indeed, in his statement of 9 November 2016 the appellant asserts that his *"first and only language in English..."*, an assertion reiterated in his statement of 3 October 2018. The appellant's cousin, M, asserts that the appellant *"does not really speak Somali anymore"*.

50. On the evidence before me, I am prepared to accept to the lower standard that the appellant considers his first language to be English and that his Somali language abilities are, as Ms McCarthy submits, currently limited to speaking the odd word of Somali and the ability to say basic Somali expressions. I remind myself however that

this was not always the case and that it is not asserted that at the time the appellant arrived in the UK that he spoke anything other than Somali.

51. In his report of 8 December 2016, Dr Hajioff observed that the appellant is above average intelligence, and it is also said that this may even be an underestimate (para 43). It is further observed that the appellant was diagnosed with dyslexia in secondary school (para 30), which I accept. Despite Dr Hajioff confirming that he is not trained in the area (para 40) he offers the following opinion:

> "[6] He…suffers from marked dyslexia with poor reading and writing abilities. He would, therefore, find it very difficult to learn any new language, with which he did not grow up. …
>
> [41] I believe that his dyslexia will make it particularly difficult for him to acquire the new language skills he will need in, what will be for him, a new country"

52. Dr Hajioff does not comment upon the appellant's historic ability to learn the English language, and in particular how this fact sits in the context of the likely difficulties of the appellant now learning a new language. In this regard, I note that it is said that by the time of the appellant's mother's arrival in the UK in 1999 the appellant primarily spoke the English language and that his Somali was so poor that his aunt had to assist on occasion with communication between the appellant and his mother. In any event, Dr Hajioff does not opine that the appellant could not learn (or re-learn) the Somali language merely that it would be difficult for him to do so (if it assumed that Dr Hajioff was intending to include the Somali language in his references in paragraphs 6 and 47). Nor is any detail provided in the report as to the likelihood of the appellant being able to learn at least some (important) aspects of a "new language", particularly in circumstances in which he has previously spoken that language. The further obvious vacuum in the report is the lack of evidence relating to the timescale within which it might be possible for the appellant to learn a new language. I remind myself that ultimately it is for the appellant to make out his case, and whilst I have taken full account of the evidence provided by Dr Hajioff I do so bearing in mind those matters identified above in this paragraph.

53. As indicated Mr Jarvis submits in the alternative that an inability to speak Somali would not be a disadvantage in the labour market. The evidence, however, does not go as far as Mr Jarvis suggests. Whilst the Landinfo report identifies that English is viewed as a 'skill' by employers and the evidence also discloses that there have been a significant number of returnees from the 'West', there is no positive evidence on the issue of whether an absence of an ability to speak the Somali language would be a disadvantage in the labour market. Given that Somali is the primary spoken language in Mogadishu, I not prepared to accept Mr Jarvis' submission absent specific evidence in support thereof.

54. Moving on, as summarised in paragraph 45 above Dr Bekalo also points to the fact that the appellant does not have any *"meaningful skills"* as *"complicating"* his chances of survival in Somalia. However, given that the appellant will, at least initially, be

competing for employment against uneducated and unskilled workers and given the type of employment that is on offer, the appellant's lack of work experience and skills is not likely to count against him to any significant degree, if at all. In any event, the appellant has level 1 and level 2 qualifications in bricklaying, albeit he does not have the certificates (FtT's decision paras. 26 and 27), and he has undertaken a course in carpentry (FtT's decision para. 24). He does, therefore, have at least some skill base relevant to the booming construction industry in Mogadishu. The appellant also has the benefit of two other positive characteristics that his competition is unlikely to share i.e. his ability to speak English and the fact that he has been educated.

55. Drawing all the evidence together, including the substantial amount of evidence before me to which I have not specifically referred, I conclude that there has been no material change in the level of the employment/economic opportunities available in Mogadishu from that identified by the Tribunal in MOJ and the later reported decision of AAW. The appellant would return to Mogadishu with sufficient funds to enable him to obtain simple accommodation and the necessary food and hygiene products etc so as to ensure that at the point in time of his return, and for a number of months thereafter, he would not be anywhere close to living in conditions which fall below the Article 3 threshold.

56. The appellant is a fit and healthy person, able to compete in the market for low skilled employment in Mogadishu. Such employment opportunities exist outwith the need for clan assistance and the appellant has the advantage of being educated when seeking out those opportunities. The prospects of obtaining such employment will increase over time, as the appellant begins to re-develop his Somali language skills (the likelihood of which must be increased by the fact that he will be in daily contact with those communicating in the Somali language) and becomes integrated into Somali and clan culture.

57. The Landinfo report identifies that it is the small companies, which are most numerous, that rely on family and clan members to fill jobs that require simple skills, this being as a consequence of the insecurity and general distrust of people from a different clan. Whilst I accept that the obtaining of such work will be beyond the appellant in the immediacy of his return, given his lack of clan integration, knowledge of Somali culture and Somali language, no reason has been offered as to why the appellant could not familiarise himself with his clan culture and ultimately earn the trust of the clan members in Mogadishu, thus increasing his prospects of employment yet further as time goes by.

58. Nevertheless, irrespective of whether the appellant progresses as identified above I conclude that his return would not lead to a breach of Article 3. I do not accept that there is a real risk that the appellant will not obtain some form of employment in the period prior to the exhaustion of the monies he will have in the immediacy of his return and for some months thereafter. Whilst the income levels are not high, with unskilled manual labourers said to earn approximately $200 per month, this is

sufficient to ensure the appellant would be able to live in conditions which do not breach the Article 3 threshold.

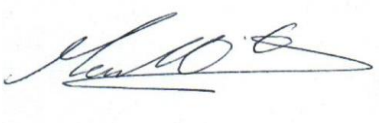
59. For all these reasons, I conclude that the appellant's deportation would not lead to a breach of Article 3 ECHR. As already indicated, it was accepted by Ms McCarthy that there was no prospect of the appellant succeeding on Article 8 grounds absent succeeding on Article 3 grounds.

Decision

The decision of the FtT is set aside

Upon remaking, I dismiss the appellant's appeal

Signed:



Upper Tribunal Judge O'Connor