Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00072/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th May 2018, 18th October 2018, 22nd November 2018, 10th May 2019, 17th June 2019 (at the Royal Courts of Justice), 6th September 2019, and 20th December 2019.	**On 4th February 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

AYA
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Nicholson of Counsel, instructed by Thompson & Co Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appealed against the decision First-tier Tribunal Judge Kainth promulgated on 22 December 2017, in which his appeal against the Respondent's decision to refusal his protection and human rights claim (in the context of revocation of his protection status and deportation) dated

19 May 2017 was dismissed. In a decision promulgated on 14 February 2019, the Upper Tribunal found an error of law in that decision, set it aside and gave directions for the re-hearing of the appeal in the Upper Tribunal. The background to this appeal is set out in the error of law decision annexed and will not be repeated herein save as where necessary.

2. The determination of this appeal, both at error of law and remaking stage has been complex and has necessitated a number of hearings, due to both practical difficulties and also a series of changes in relevant authority from both the Court of Appeal and the Upper Tribunal on matters directly relevant to this appeal. I am grateful to both Mr Nicholson and Mr Kotas for their detailed preparation for the hearings, clear skeleton arguments and schedule of evidence relied upon. To some extent, the detailed submissions made by both parties have been overtaken by subsequent authority and it is not therefore be necessary to refer in as much detail to all of the submissions made throughout the course of these hearings.

3. As set out in paragraph 31 of the error of law decision annexed, the First-tier Tribunal found that the Appellant was excluded from humanitarian protection by virtue of paragraph 339D(iii) of the Immigration Rules due to his criminal offences and it was found that the Appellant did not meet any of the exceptions to deportation in paragraphs 398 and following of the Immigration Rules and sections 117A to 117D of the Nationality, Immigration and Asylum Act 2002, nor were there any very compelling circumstances which would outweigh the public interest in deportation. These findings were unchallenged on appeal to the Upper Tribunal and expressly preserved in the decision annexed.

4. The remaining issues to be determined were, broadly, in relation to cessation and protection and as to whether the Appellant would be at risk of a breach of Article 3 of the European Convention on Human Rights on return to Somalia. In light of developments in case law, a number of separate issues within these broad grounds of appeal have arisen. More specifically, the outstanding issues are as follows. First, whether or not the Appellant was a recognised refugee, such that the cessation provisions apply to him when considering the test to be applied to the second and third issues. Secondly, whether the Appellant is at risk in his home area of Luuq. Thirdly, if so, whether it would be reasonable and not unduly harsh for the Appellant to internally relocate to Mogadishu. Fourthly, the appropriate test to be applied for the purposes of Article 3 of the European Convention on Human Rights. Finally, whether the Appellant's return would be in breach of Article 3.

The Appellant's Immigration and criminal history

5. The Appellant is a national of Somalia, born in Luuq and is a member of the Ashraf clan. On 28 July 2003 he was issued with entry clearance giving him indefinite leave to enter the United Kingdom to join his wife, who had been granted indefinite leave to remain in the United Kingdom as a refugee on 12 December 2002. Her status was on the basis that she

was at risk on return to Somalia as a member of the Ashraf minority clan. The Appellant arrived in the United Kingdom on 5 August 2003 and has remained here since.

6. On 7 May 2015, the Appellant was convicted of possession of a knife blade/sharp appointed article in a public place for which he was sentenced to a one year community order with unpaid work requirement and ordered to a pay victim surcharge and costs.

7. On 12 April 2016, the Appellant was found to have failed to comply with the requirements of the earlier community order which was revoked and he was also convicted of theft from a person and assault occasioning actual bodily harm for which he was sentenced to one month imprisonment and 16 months' imprisonment respectively, to run concurrently.

8. On 18 October 2016, Appellant was convicted of aggravated vehicle taking for which he was sentenced to 9 weeks in prison and was disqualified from driving; and for driving a vehicle with excess alcohol for which he received a sentence of four weeks' imprisonment to be served concurrently. On the same date he was also convicted of driving otherwise than in accordance with a licence and using a vehicle whilst uninsured for which no separate penalties were given.

9. Since the decision which is the subject of this appeal, the Appellant has committed and been convicted of a further criminal offence, namely possession of an offensive weapon, for which he was sentenced to 15 months' imprisonment, however this offence is not relevant to the decision under appeal which predates it.

10. The Respondent notified the Appellant of the intention to cease his refugee status on 7 June 2016, pursuant to which the Appellant made representations on 12 June 2016. In the letter dated 7 June 2016, the Respondent set out the Appellant's immigration and history, as well as background information as to the current situation in Luuq and the country guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC).

11. From the background evidence, the Respondent considered that Al-Shabaab were not in control in Luuq and the Appellant would not be at real risk of persecution or serious harm from them there. The Respondent went on in paragraph 14 to state, *"However, it is accepted that in areas outside of Mogadishu, members of minority groups may face discrimination and human rights abuses which, in some circumstances, may amount to persecution. In view of the above it is considered that there may remain obstacles preventing you from returning to Luuq in the Gedo region where your parents were born."* The Respondent went on to identify Mogadishu as the place of return, where the Appellant had previously lived according to the statement of evidence form completed by his wife (and where her parents were born and where she had a house)

and consideration was given as to whether the Appellant could resettle there.

12. The UNHCR made representations in relation to the proposed cessation on 31 March 2017. First, it was noted that the trigger for consideration of cessation of status was the Appellant's criminal convictions, which in the UNHCR's opinion, was not appropriate. Secondly, it was not agreed that the situation currently pertaining in Somalia warranted the application of Article 1C(5) of the Refugee Convention on an individual or collective basis. The UNHCR did not consider that the situation in Somalia has fundamentally changed such as to apply this provision. Thirdly it was not accepted that the Respondent had discharged the burden of proof on her with evidence that demonstrated the specific fundamental changes needed for cessation, together with adequate consideration of the individual circumstances of the Appellant. Background evidence was referred to which recorded continuing persecution of minority clans, in particular in southern and central Somalia. A recommendation was made for a thorough assessment of the Appellant's case, including his connections with Somalia; family ties; access to financial resources and the likelihood of remittances from abroad; as well as an assessment of relevant improvements since the Appellant was recognised as a refugee the purposes of Article 1C(5) of the Refugee Convention.

Explanation for refusal

13. The Respondent refused the Appellant's protection and human rights claim on 19 May 2017. It was noted by the Respondent that the Appellant derived his refugee status from his wife, who was granted asylum on the basis of her Ashraf ethnicity. It was found that there has been a significant and enduring change in the circumstances in which the Appellant was granted refugee status, as there is now no persecution on the basis of clan membership in Mogadishu and the Appellant's Ashraf clan has a presence in Mogadishu. The Appellant would no longer be at risk on return to Mogadishu, nor at risk of any breach of Article 3 of the European Convention on Human Rights on the basis of clan affiliation. The country guidance in MOJ was referred to and applied. In the alternative, it was not accepted that the Appellant would be at risk on return from Al-Shabaab as he was not a high-profile member of a political institution. The Appellant was excluded from humanitarian protection under paragraph 339D of the Immigration Rules.

14. The Respondent considered that the Appellant would face no significant obstacles to his reintegration in Somalia, as an adult male in reasonable health and his ability to assimilate into a foreign culture, namely the United Kingdom, meant that he would be able to re-assimilate to Somali culture. The Appellant was considered to have sufficient ties to his home country, including language, cultural background and social network to enable him to readapt to life there. The Appellant's relatives in the United Kingdom could assist him on return and he could use the skills gained here in obtaining lawful employment in Somalia. Overall the Appellant's return

to Somalia would not be a disproportionate interference with his right to respect for private and family life in the United Kingdom and there were no very compelling circumstances to outweigh the significant public interest in deportation.

The Appellant's claim

15. In his written statement signed and dated 29 November 2017, the Appellant sets out his history. He states that he grew up in Luuq in Somalia with his parents and sister. It was a small village with 400 or 500 houses and he attended school there up to the age of 12 or 13. From the age of 17 he worked on a farm and also in a small garage fixing cars, such as fixing brakes and replacing tyres.

16. The Appellant's problems began in 1991 when the Somalian government collapsed and his home area was caught in the middle of fighting between two clans. The Appellant is from the Ashraf minority clan and was targeted because of this. The conflict settled down in 1993 and 1994 when a group called al-Itihaad (a predecessor to Al-Shabaab) came to the area with a focus on strict religious practices. The Appellant was imprisoned by this group in 1996 after being caught smoking, he was taken to the police station, beaten and subsequently given one year's imprisonment in jail. The Appellant was released from prison after about three months after the Ethiopian army invaded, however al-Itihaad returned and the Appellant was again arrested. He was kept overnight at a police station but then released. After al-Itihaad were pushed out of the area again, persecution of minority clans resumed.

17. The Appellant married in 2001. The same year tribal soldiers went to the Appellant's home, raped his sister and killed his sister and father. The Appellant's wife had fled by the time he had returned home and he did not see her again until they were both in the United Kingdom. The Appellant left Luuq for Ethiopia with his mother and whilst there received contact from his wife, following which he successfully applied to come to the United Kingdom in 2003. The Appellant's relationship with his wife broke down in 2005, his mother died the same year and after that the Appellant had no surviving family members.

18. The Appellant's written statement also sets out criminal convictions; his English language classes and an alcohol detox programme which he undertook in prison.

19. In his statement, the Appellant set out two reasons why he did not want to go back to Somalia. First, he did not have any family or connections left in Somalia. Secondly, there continued to be problems in his home area, which was under the control of Al-Shabaab and where he would have no one who could help him. The Appellant had no financial resources or connections to support him in Mogadishu either, a place where he has never been, nor worked, nor has he any friends there. He states that

employment is found through tribal connections and family connections which the Appellant no longer has.

20. The Appellant attended the oral hearing on 17 June 2019, adopted his written statement dated 29 November 2017 and gave oral evidence with the assistance of a court appointed Somali interpreter.

21. In cross-examination the Appellant was asked what he was scared of going back to Somalia. He said he hasn't been there for a long time and there have been so many changes. He was afraid of tribes killing each other in Somalia and of the risk from Al-Shabaab.

22. The Appellant had always lived in and around Luuq prior to leaving Somalia in 2001 to go to Ethiopia. He had stayed in the area even though he had experienced problems there in 1996. The Appellant's wife was from the Ashraf tribe and also from Luuq.

23. The Appellant's mother went to Djibouti in 2005 for medical treatment, on her own and stayed for about three months before she died in the same year. The Appellant's father died in 2001. The Appellant had an aunt who fled to Yemen and a sister who died at the same time as their father. The Appellant does not keep in touch with anyone in Somalia.

24. In terms of what is happening in Somalia, the Appellant stated that he had seen some of it on the news and had seen that Al-Shabaab were in control and persecuted minorities in some areas. He thought that the government were in control in Mogadishu.

25. In the United Kingdom, the Appellant has worked in three different jobs, as a cleaner and as a kitchen porter in a hospital. In Somalia, the Appellant had worked as both a farmer and changing tyres on cars. He accepted that he also fixed brakes but corrected this to say it was only changing tyres. He said he learned something about being a mechanic since coming to the United Kingdom working in a garage in North West London. However, the Appellant does not have a qualification as a mechanic and did not go to college to study this.

26. The Appellant was diagnosed with hepatitis B in 2017 when he was in a detention centre but is not on any medication for this, only painkillers. He also said that he has a pain one side of his body and problems with his circulation for which he is waiting further tests.

27. The Appellant has on two occasions indicated that he wished to return to Somalia, first on 26 May 2017 when he signed a disclaimer and made an application under the facilitated returns scheme (which was provisionally accepted but then refused) and secondly at the oral hearing before me on 17 June 2019. Following both of these occasions, the Appellant has however confirmed that he wished to proceed with his appeal against deportation to Somalia.

Findings and reasons

Is the Appellant a refugee to whom the cessation provisions apply?

28. In the Respondent's letter dated 7 June 2016, it was said that the Appellant was being written to to inform him that the Respondent was "*considering revoking (ceasing) your refugee status*" and the letter went on to refer to Article 1C of the Refugee Convention and paragraphs 338A to 339AB of the Immigration Rules in relation to revocation of refugee status. In terms of the Appellant's immigration history, it was stated that the Appellant was issued with an entry clearance visa with indefinite leave to enter the United Kingdom to join his wife who had been granted indefinite leave to remain in the United Kingdom as a refugee. There was no express reference to the Appellant having been granted refugee status himself, although this was clearly implied by the premise of the letter being revocation of the same. The Respondent's decision letter of 19 May 2017 is in similar terms, with the same description of the Appellant's entry to the United Kingdom and express consideration of revocation of protection status.

29. On this basis, the appeal proceeded through the First-tier Tribunal and initially in the Upper Tribunal on the basis that the Appellant had been granted refugee status and the decision under challenge was in part the cessation of the same. However, in the skeleton argument submitted on behalf of the Respondent dated 30 August 2019, it was raised for the first time as a preliminary point that the Appellant had not in fact been granted refugee status, nor has he ever been recognised as a refugee, such that the cessation provisions are not applicable, notwithstanding the terms of the refusal letter. It was noted that the Appellant's visa was for indefinite leave to enter rather than any grant of refugee status pursuant to paragraph 334 the Immigration Rules.

30. On behalf of the appellant, Mr Nicholson strongly opposed this point being raised part-way through the remaking of the appeal, which was a point not raised before the First-tier Tribunal and in circumstances where the decision under appeal was expressly about the revocation of refugee status and treated as such throughout by both parties. Mr Kotas accepted the lateness of the point but submitted that it was partly a response to the Appellant's oral evidence at the previous hearing and seen in the context of his indications of wishing to return to Somalia and his failure to articulate any well-founded fear of persecution for convention reasons on return to Somalia. However, pending a Court of Appeal decision on this point in a case heard in July 2019, the point was not developed further at the hearing on 6 September 2019.

31. Prior to determination of this appeal, the Court of Appeal handed down judgement in KN (Democratic Republic of Congo) v Secretary of State for the Home Department [2019] EWCA Civ 1665 and Secretary of State for the Home Department v JS (Uganda) [2019] EWCA Civ 1670; both of which dealt with the status of those who entered the United Kingdom as dependents of a refugee. I issued directions to the parties on 14 October 2019 inviting written submissions on the issues raised by these decisions,

including whether the Respondent should be permitted to argue the point at this stage in proceedings about whether the Appellant was in fact a refugee.

32. Written submissions dated 29 October 2019 were received on behalf of the Respondent addressing the issues raised and requesting a further oral hearing for full legal argument. There was no response to the directions on behalf of the Appellant and I issued further directions on 31 October 2019 for a further oral hearing and supplementary skeleton argument behalf of the Appellant. These matters were dealt with at the oral hearing on 20 December 2019. Neither party made any detailed submissions on KN (Democratic Republic of Congo) as it was factually distinct to the present appeal.

33. The Respondent's position is that the decision in JS (Uganda) is binding on the Upper Tribunal and must be considered and applied as such whether or not points taken therein had been relied upon by the Respondent previously. Following that decision, the Respondent submitted first that this Appellant was never in fact recognised as a refugee by the Respondent, notwithstanding the terms of the refusal letter which is the subject of this appeal. There had never been an express grant of refugee status to the Appellant, it was submitted to be unequivocally the case that the Appellant was joining his wife who had fled persecution and that he himself had suffered no persecutory treatment prior to leaving Somalia. It was only in the terms of the letters dated 7 June 2016 and 19 May 2017 that the Appellant was implicitly referred to as a refugee and for the reasons given by the Court of Appeal in JS (Uganda) that reasoning is arguably flawed.

34. In the alternative, if the Appellant was accepted to have been recognised as a refugee, such a concession should be permitted by the Upper Tribunal to be withdrawn by the Respondent, in line with the Court of Appeal's reasoning in JS (Uganda) that such a concession was misconceived and discretion should be exercised for it to be withdrawn because the Appellant's status derived only from his spouse.

35. On either basis, the Respondent submitted that Article 1C of the Refugee Convention and the cessation provisions have no relevance to this Appellant's appeal and instead it is for the Appellant to show that he satisfies Article 1A of the Refugee Convention that he is at real risk of persecution on return to Somalia.

36. Mr Nicholson's primary submission on behalf of the Appellant is that the Respondent should not be permitted to argue the point about the Appellant's status, which had not been raised before the First-tier Tribunal, nor prior to the rehearing of the appeal before the Upper Tribunal on 17 June 2019. This is in contrast to the proceedings in JS (Uganda) where the issue had been fully canvassed in the initial hearing before the First-tier Tribunal with findings of fact made. Further, the Appellant's wife was granted refugee status on the basis of risk of persecution as a minority

Ashraf clan member, the same clan that the Appellant is from and who would be at the same risk of persecution for the same reason as his wife, both at the date of his admission to the United Kingdom and now. In this regard specific reliance was placed on paragraph 190 of Underhill LJ's judgement in JS (Uganda) which stated as follows:

> *"I should like to observe, at the risk of spelling out the obvious, that this issue only arises in cases where the risk of persecution which leads to the grant of protection to the "primary" refugee does not also extend to his or her family members: very often of course it will, either because they share the same characteristic as gives rise to the risk because the persecutor will extend his persecution of, say, a political activist to his or her family members irrespective of their own conduct or opinions. I do not wish to be understood as saying that they may not be very strong reasons for the admission of family members even way they personally are not at risk: I say only that those reasons do not derive from the Convention itself."*

37. In addition, Mr Nicholson submitted that in any event it is doubtful that the Upper Tribunal has jurisdiction under section 82(1) of the Nationality, Immigration and Asylum Act 2002 to the exercise of discretion to permit this point to be argued in the same way that the Court of Appeal did in JS (Uganda). This is because the proceedings before the Upper Tribunal are no longer considering whether there was an error of law in the decision of the First-tier Tribunal, that was decided in the error of law decision promulgated on 14 February 2019 and is not therefore a fresh point of law not argued below, but involves further findings of fact such that a court should be extremely reluctant to exercise its discretion to hear fresh points, as stated in by Elias LJ in paragraph 69 of Miskovic v Secretary of State for Work and Pensions [2011] 2 C.M.L.R 20.

38. The issue of whether or not the Appellant is a refugee is important as it determines whether it is the cessation provisions which apply to this appeal, for which the burden of proof is on the Respondent to show a significant and non-temporary change such that the person is no longer at risk; or the normal provisions in an asylum claim for which the burden of proof is on the Appellant to show that he is at real risk of persecution for a convention reason on return to Somalia.

39. In terms of the discretion of the Upper Tribunal to admit consideration of this issue, Haddon-Cave LJ confirmed in paragraph 88 of JS (Uganda) that *"where an administrative decision has been made on a mistaken premise, the decision can be revisited so that the law is properly applied, unless it would be unjust to allow this such as where there has been reliance to the detriment of the individual."* Although as noted by Mr Nicholson the issue had not been properly raised before the First-tier Tribunal, there is nothing to suggest any reliance to the detriment of this Appellant of the issue being raised during the course of this appeal before the Upper Tribunal and a full opportunity was given to him to address the point both in writing and at a further oral hearing.

40. Reasons for the exercise of discretion were given in paragraph 89 of JS (Uganda) as follows:

> *"In my view, this is a case in which the court should exercise its discretion to allow a concession to be withdrawn. First, there is no evidence that particular consideration was given to JS's actual status by the SSHD's officials. The 2015 letter appears to have been written on the assumption that JS was a Refugee Convention refugee (an assumption which, on this hypothesis, was mistaken). Second, the point as to JS's status is a difficult one (as Irwin LJ pointed out when granting permission to appeal) and it is not altogether surprising that the SSHD's Presenting Officer and legal advisers did not appreciate it until a late stage in the proceedings. The point is not 'Robinson obvious' (c.f Underhill LJ in GS (India) v SSHD [2015] 1 WLR 3312 at [88]-[89]). Third, the point in question is a pure point of law as to the definition of "refugee" under Article 1A(2) of the Refugee Convention and requires no fresh evidence. Fourth, there is no material prejudice to JS in allowing the point be taken appeal. The possibility that JS had never been a refugee within the ambit of the Refugee Convention was raised (albeit somewhat Delphically) in the SSHD's skeleton arguments dated 22nd of February 2018 before the UT; but it is right to say that the point was not pleaded in the SSHD's Rule 24 Respondent's Notice. But there is ample authority that an appellate court has jurisdiction to hear fresh points of law not argued below (per Elias LJ in Miskovic v SSHD [2011] 2 CMLR 30 at [69]."*

41. I find that the same reasons essentially apply in the present appeal for the exercise of discretion to allow the Respondent to withdraw the concession. There is nothing to suggest in the present case that any particular consideration of this issue was given before; it was not a straightforward issue as recognised by the court and at least prior to the handing down of judgement in JS (Uganda). Although it may be that a court should be reluctant to exercise such discretion where further findings of fact are required, the present appeal concerns essentially a point of law as to the definition of a refugee and at most requires very limited further findings of fact as to the Appellant's status in 2003 and no further evidence is relied upon by either party for this purpose. The appeal was listed for further hearing specifically because further evidence and fact-finding was required in any event. This point adds little to that task.

42. Further, the fact that this issue has been raised during the course of the remaking of the appeal before the Upper Tribunal rather than at error of law stage, does not mean that the Upper Tribunal does not have jurisdiction to entertain the argument in accordance with section 82 of the Nationality, Immigration and Asylum Act 2002 or otherwise.

43. The question is then as to whether this Appellant was a refugee on the facts of his case. Underhill LJ set out the interpretation of Article 1A(2) of

the Refugee Convention in paragraphs 70 and 71 of JS (Uganda) as follows:

> *"70. The Refugee Convention is a free-standing instrument which must be read as a whole. Article 1A(2) provides that the term "refugee" applies to a person who "... owing to a well-founded fear of being persecuted for reasons of race, religion [etc ...]" is unable or unwilling to avail himself of the protection of his country of nationality. Article 1C(5) provides that a person shall cease to be a "refugee" under Article 1A if "... the circumstances in connection which he has been recognised as a refugee have ceased to exist" such that he can no longer continue to refuse to avail himself of the protection of his country of nationality. The same formulation "... the circumstances in connection which he has been recognised as a refugee ..." is also to be found in Article 1C(6).*
>
> *71. In my view, the plain and ordinary meaning of the words of Article 1A is that the status of a Refugee Convention "refugee" is only accorded to a person who themselves have a "well-founded fear of being persecuted", i.e. an individual or personal fear of persecution, not one derived from or dependent upon another person. It is clear both from the language of Article 1A itself and when read together with Article 1C(5). The reference in Article 1C(5) to "... the circumstances in connection which he has been recognised as a refugee ..." is a direct reference to the "person" who falls within the definition of "refugee" in Article 1A, namely "... any person who ... owing to [his] well-founded fear of persecution ...", i.e. not someone else's fear of persecution."*

44. In the present case, there is no dispute that the Appellant was granted indefinite leave to enter as the spouse of a person who was a recognised refugee in the United Kingdom on the basis of her membership of the minority Ashraf clan. There is nothing to suggest that the Appellant made any application for asylum in his own right (which was open to him to do), nor that there was any assessment of whether he was personally at risk on return to Somalia, nor that there was any express grant of refugee status or recognition under paragraph 334A of the Immigration Rules to the Appellant in 2003, nor at any time prior to the letter about cessation in 2016. It seems likely that in accordance with current practice in 2003, the Appellant was, at its highest, simply granted in line with his spouse. In these circumstances, in accordance with the reasoning in JS (Uganda) given by Underhill LJ, the Appellant is not and was not, in law, recognised as a Refugee Convention refugee by the Respondent in 2003.

45. It may be arguable that in 2003 the Appellant met the definition of a refugee in Article 1A(2) of the Refugee Convention, not as suggested by Mr Nicholson because the risk of persecution to his wife extended to him as a family member, but because the Appellant is himself a member of the Ashraf clan (albeit the Respondent suggests that the Appellant is from the Hassan group within the Ashraf which is not a minority clan), who may

have been accepted as being at real risk of persecution on return to Somalia at that time for that reason. However, that does not assist the Appellant in this appeal because he was not personally recognised as a Refugee Convention refugee, he was not given refugee status as such and there can therefore be no cessation of such status. Article 1C(5) and 1C(6) of the Refugee Convention refer only to a person who has personally been recognised as a Refugee Convention refugee.

46. For these reasons, I exercise discretion to allow the Respondent's mistake/concession in the letters of 7 June 2016 and 19 May 2017 regarding cessation of the refugee status and find that the Appellant was not lawfully recognised as a refugee in accordance with Article 1A of the Refugee Convention in 2003 (or at anytime since). As such, the cessation provisions in Article 1C(5) of the Refugee Convention are not applicable, neither is Article 11 of Council Directive 2004/83/EC (the Qualification Directive), nor paragraph 339A of the Immigration Rules. In such circumstances, the Appellant's protection claim is to be considered only in accordance with the normal provisions in Article 1A of the Refugee Convention and similar in the Qualification Directive and Immigration Rules; and the burden of proof is on the Appellant.

47. It is for an Appellant to show that he is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.

48. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the Appellant were to be returned.

49. Under the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, a person is to be regarded as a refugee if they fall within the definition set out in Article 1A of the Refugee Convention (see above) and are not excluded by Articles 1D, 1E or 1F of the Refugee Convention (Regulation 7 of the Qualification Regulations).

Is the Appellant at real risk of persecution for a convention reason on return to his home area?

50. The Appellant's preliminary point on whether he is at risk on return to his home area of Luuq in the Gedo province is that this was conceded by the Respondent in paragraph 14 of the letter dated 7 June 2016, when the

Respondent accepted that members of minority groups may face discrimination human rights abuses which, in some circumstances, may amount to persecution and in light of this there may be obstacles preventing the Appellant's return to Luuq. Mr Nicholson further relied upon paragraph 25 of the error of law decision annexed to show that the Upper Tribunal had already accepted the Respondent's concession that the Appellant would be at risk on return to his home area.

51. The Respondent has not expressly conceded, in the letter of 7 June 2016 or otherwise, that the Appellant would be at risk on return to his home area, only that there may be such a risk followed by consideration of return to Mogadishu in any event. The error of law decision goes no further than repeating the wording in the letter of 7 June 2016 and given the finding that the First-tier Tribunal erred in not considering the Appellant's home area at all, there is no preserved finding of any alleged concession or risk on return.

52. The Appellant maintains that he is at risk on return to his home area, both as a member of the minority Ashraf clan and also that he would be at risk on return from Al Shabaab. Although accepted by the Appellant by reference to background material that Luuq is relatively or entirely free from Al-Shabaab, he relies on the map of areas of influence in Somalia as at July 2017 from within the EASO Country of Origin Information Report, 'Somalia Security situation', dated August 2017, to show that the area between Mogadishu and Luuq is under Al-Shabaab control. The journey by road of over 400 km between Mogadishu to where the Appellant would be returned and Luuq would not be safe, with two thirds of the journey in an area where road connections are unsafe and susceptible to Al-Shabaab attacks. The risks from Al-Shabaab are also said to include recruitment and extortion, as well as sanctions being applied to civilians who do not obey the strict rules and ideology of Al-Shabaab. It was reiterated that the Appellant had already suffered ill treatment from al-Itihaad (said to be the predecessor of Al-Shabab, albeit there is no specific evidence on that point) on the basis that he did not conform to their strict standards having been caught smoking.

53. In relation to his risk on return as a minority clan member, background evidence referring to discrimination, human rights abuses and in some cases persecution of minorities was relied upon and even if not a concession as to risk on return, was also referred to and accepted by the Respondent. The Appellant's sister and father were killed by tribal Somali forces in 2001, which was submitted to amount to past persecution of the Appellant himself. The Ashraf have been accepted as a minority clan as long as go as 2005 in the country guidance of NM and Others (Lone women – Ashraf) Somalia CG [2005] UKIAT 00076.

54. The Appellant produced a significant bundle of background evidence in relation to Somalia totalling some 227 pages and helpfully extracted into a schedule of specific parts of that bundle which were relied upon. Even though not all of that evidence is expressly referred to in this decision, I

have considered it in full. I make the initial observation that much of the background country material relied upon by the Appellant refers to the general security situation in Somalia with almost no information specifically about the Appellant's home area of Luuq and similarly, save for express reference to the truck bombing in Mogadishu on 14 October 2017 and the demolition of informal settlements in Mogadishu since late 2017, relatively little evidence about the general security situation in the capital either. Whilst it is clear from the background evidence relied upon that conditions in Somalia generally remain poor, with instability, continuing violence and conflict as well as poor humanitarian conditions; I make a further observation that despite the volume of background material relied upon by the Appellant, there was no suggestion that there should be any departure from the country guidance in MOJ, nor that the material relied upon was credible fresh evidence of a change since that decision.

55. The Respondent's position on the Appellant's return to home area is that it would be safe for him to do so and he would not be at real risk of persecutory treatment on the basis of clan membership or otherwise. Although accepted that the Ashraf suffered during the civil war in the 1990s, the Respondent submits that the normalisation of conditions in the country appears to have benefited the Ashraf in the same way as other Somalis. Further, that the position as to whether the Ashraf are a minority clan is, in reliance on the Landinfo Query Response 'Somalia: The Ashraf' 10 August 2018, suggested to be more nuanced than that relied upon by the Appellant as the group has been divided into the Hussain and the Hassan. The latter living mainly inland, including in Gedo and Mogadishu and are not considered to be a minority. The Hussain group are found more in the coastal cities of southern Somalia, also including Mogadishu. It is suggested that as the Appellant comes from Luuq, he is part of the Hassan group and therefore not a minority clan member and not at risk of discrimination or persecution as such. However, although this report suggests a split into two separate groups, I do not find that it is reliable evidence that only one group is considered to be a minority clan and the other not.

56. In any event, even if the Appellant is accepted to be a minority clan member, the Respondent submits that it is safe for him to return to his home area. The Respondent relies on the Asylum Research Consultancy report, 'Situation in South and Central Somali (including Mogadishu)', 25 January 2018 to the effect that most urban areas are held by the Somali authorities, with assistance from AMISOM, who cover the Appellant's province, together with the Ethiopian National Defence Force and the Kenny Defence Force. Further, the EASO Country of Origin Report, 'Somalia Security Situation', December 2017 describes the town of Luuq as an island of stability where progress and development takes place and confirms that Luuq is under AMISOM control.

57. The Respondent acknowledges that in the Gedo region from 1 January 2016 to 31 August 2017, there were 229 security incidents with estimated

753 deaths and in Luuq specifically four aid workers were abducted in April 2017. The Respondent also refers to the voluntary repatriation of 32,500 Somalis from Kenya to a number of cities including Luuq. This of itself was submitted to be evidence of the stability, safety and lack of inter-clan violence in Luuq, albeit there were problems and displaced persons because of drought, with cash assistance being provided to some and critical global acute malnutrition rates being observed as well as a cholera outbreak (based on background country information up to late 2017).

58. Finally, the Respondent submitted that it would be possible for the Appellant to travel from Mogadishu to Luuq by minibus with nothing to suggest that the Appellant would be at any risk if a checkpoint was encountered along the way, in particular because the Appellant would not be perceived as an enemy of Al-Shabaab.

59. The evidence before me specifically in relation to conditions in look, both in terms of the situation for minority clan members and risk from Al-Shabaab is relatively thin. In relation to Al-Shabaab, it is common ground between the parties that they are not in control in Luuq, which is a relatively stable town to where displaced persons have returned. I do not find on the evidence that is available that the Appellant is at any risk in Luuq from Al-Shabaab.

60. In relation to the position of minority clan members, of which I find the Appellant is one, belonging to the Ashraf clan, there is no specific information at all as to the situation in Luuq and at best I can only rely on generalised evidence pertaining to Somalia as a broader area, of discrimination, human rights abuses and is cases poorer living conditions for minority clans. This much is accepted by the Respondent, who went so far as to say that this may amounts to persecution, albeit there was no concession in this case that it did. To the lower standard of proof applicable in such cases, I find that the evidence is just sufficient to show that there is a real risk of persecution of the Appellant based on his ethnicity, namely his membership of the minority Ashraf clan in his home area.

61. In any event, I find force in the submissions made on behalf of the Appellant that even if not at real risk on return to his home area, there was no safe journey option for him to reach there from Mogadishu. It is clear from the map available that the Appellant would have to travel a significant distance by road (some 400km), predominantly through territory held by Al-Shabaab and where there is, albeit limited, evidence of unsafe conditions to civilians generally. The Respondent has not established that the Appellant would be able to safely reach his home area in the circumstances.

Is it reasonable and not unduly harsh for the Appellant to internally relocate to Mogadishu?

62. On the basis that I have found that the Appellant is at risk on return to his home area (or at least getting to his home area), the next issue to determine is whether it would be reasonable or not unduly harsh for him to internally relocate to Mogadishu. The legal principles for internal relocation are well established and not in dispute in this appeal and therefore will not be repeated within this decision.

63. As above, neither party has suggested that there should be any departure from the country guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC), which is applicable to the present appeal. The key findings for the purposes of this appeal as summarised in the headnote, with additional cross-referencing to the original paragraph numbers in the main body of the decision given in square brackets for ease of cross referencing to relevant paragraphs in later decisions below, are:

(i) The country guidance issues addressed in this determination are not identical to those engaged with by the Tribunal in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC). Therefore, where country guidance has been given by the Tribunal in AMM in respect of issues not addressed in this determination then the guidance provided by AMM shall continue to have effect.

(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. [paragraph 407(a)]

(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. [paragraph 407(b)]

(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. [paragraph 407(c)]

(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. [paragraph 407(d)]

(vi) There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West. [paragraph 407(e)]

(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 from majority clan members, as minority clans may have little to offer. [paragraph 407(f)]

(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. [paragraph 407(g)]

(ix) If it is accepted that a person facing 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 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.* [paragraph 407(h)]

(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. [paragraph 407(h)]

(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. [paragraph 408]

(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 formal 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 prospect of having to live in conditions that will fall below acceptable humanitarian standards. [paragraphs 424 and 425]

64. At the outset, I find in accordance with the country guidance set out above, that the Appellant is not at risk on return to Mogadishu because of his ethnicity, as a member of the Ashraf minority clan; nor is he at risk on return to Mogadishu from Al-Shabaab. For the same reasons he does not face any Article 15(c) risk and in any event is excluded from humanitarian protection. There was in any event no reliance placed by the Appellant on any such risks specifically in Mogadishu, the matters relied upon were that internal relocation to Mogadishu was unduly harsh and unreasonable because of the living conditions that he would face on return there.

65. The Appellant's position is that the factors set out in paragraphs 407(h) and 408 of MOJ apply only to those from Mogadishu who would be returning there and are not applicable to someone like the Appellant who is not from Mogadishu. Although some of these factors could arguably be of relevance to people not from Mogadishu in a similar way to their relevance for a person who has been absent for some time, it was submitted that these were not directly relevant to this Appellant's circumstances and overall the factors in 407(h) and 408 were not applicable to someone not originating from Mogadishu. Further, it was submitted that the reference to opportunities in Mogadishu from the

economic boom in MOJ were also only applicable to returning residents and had no application to those not from Mogadishu.

66. Mr Nicholson submitted that the Appellant fell within paragraph (xii) of the head note (paragraphs 424 and 425 of the main decision) in MOJ, in that the Appellant is from a minority clan with no links to Mogadishu, no access to funds or any other support and therefore no means to establish a home or therefore employment in Mogadishu. As such the Appellant would be at real risk of having no alternative but to live in makeshift accommodation within an IDP camp which would be unreasonable and unduly harsh.

67. The Respondent submitted that consistent with country guidance in MOJ, it is for the Appellant to establish that he would not be able to take advantage of the economic boom in Mogadishu, but that he has given no reason as to why he would be unable to do so, even as a member of a minority clan and even if accepted that he had no access to funds or other support. To the contrary, the Appellant has an employment history in both Somalia and the United Kingdom, as a cleaner, a kitchen porter and at its lowest, a tyre fitter (albeit with some evidence of wider experience as a mechanic in both Somalia and the United Kingdom) and the Ashraf clan have a presence in Mogadishu such that he may have some clan protection. Further, the Appellant still speaks Somali. The Appellant is overall in good health and has no dependents. There is no reason to think that the Appellant would end up in an IDP camp in Mogadishu in the circumstances. Overall the Appellant would be able to lead a relatively normal life by the standards generally prevailing in Mogadishu and internal relocation would not therefore be unduly harsh on him.

68. There is some concern expressed by the Court of Appeal in Secretary of State for the Home Department v Said [2016] EWCA Civ 442 as to possible conflation between factors relevant to the assessment of internal relocation, humanitarian protection and Article 3 in MOJ, which need to be set out in full to clarify which parts of the guidance set out above are specifically relevant to the assessment of internal relocation and which are relevant to an assessment under Article 3. Although ideal separately with Article 3 in the section below, part of what is set out here sets the scene for the assessment of Article 3 as well. The discussion in Said is at paragraphs 26 to 31 which state as follows:

> *"26. Paragraph 407(a) to (e) are directed to the issue that arises under article 15(c) of the Qualification Directive. Sub-paragraphs (f) and (g) establish the role of clan membership in today's Mogadishu, and the current absence of risk from belonging to a minority clan. Sub-paragraph (h) and paragraph 408 are concerned, in broad terms, with the ability of a returning Somali national to support himself. The conclusion at the end of paragraph 408 raises the possibility of a person's circumstances failing below what "is acceptable in humanitarian protection terms". It is, with respect, unclear whether that is a reference back to the definition of "humanitarian protection" arising from article 15 of the Qualification Directive. These factors do*

not go to inform any question under article 15(c). Nor does it chime with article 15(b), which draws on the language of article 3 of the Convention, because the fact that a person might be returned to very deprived living conditions, could not (save in extreme cases) lead to a conclusion that removal would violate article 3.

...

28. In view of the reference in the paragraph immediately preceding para 407 to the UNHCR evidence, the factors in paras 407(h) and 408 are likely to have been introduced in connection with internal flight or internal relocation arguments, which was a factor identified in para 1 setting out the scope of the issues before UTIAC. Whilst they may have some relevance in a search for whether a removal to Somalia would give rise to a violation of article 3 of the Convention, they cannot be understood as a surrogate for an examination of the circumstances to determine whether such a breach would occur. I am unable to accept that if a Somali national were able to bring himself within the rubric of para 408, he would have established that his removal to Somalia would breach article 3 of the Convention. Such an approach would be inconsistent with the domestic and Convention jurisprudence which at para 34 UTIAC expressly understood itself to be following.

29. Having set out its guidance, UTIAC then turned to consider IDPs, about which each of the experts had given some evidence. It recognised that the label was problematic because there were individuals who are considered as internally displaced persons who have settled in a new part of Somalia in "a reasonable standard of accommodation" and with access to food, remittances from abroad or an independent livelihood. UTIAC considered that the position would be different for someone obliged to live in an IDP camp, the conditions of some of which "are appalling", para 411. It continued by quoting from evidence of armed attacks on IDP camps, of sexual and other gender based violence and the forcible recruitment of internally displaced children into violence, albeit that it did not accept the evidence it quoted. UTIAC also mentioned overcrowding, poor health conditions and (ironically) that the economic improvements in Mogadishu were leading to evictions from IDP camps in urban centres with vulnerable victims being unable to seek refuge elsewhere.

30. It is immediately apparent that the discussion of this evidence, which is culled from expert reports, understandably touches on concerns about violence, which in article 3 terms would be analysed by reference to the approach in MSS and Sufi and Elmi cases, and aspects of destitution, which would be analysed by reference to the approach in the N and D cases. The conflation continues in para 412:

> *"Given what we have seen, and described above, about the extremely harsh living conditions, and the risk of being subjected*

> *to a range of human rights abuses, such a person is likely to found to be living at a level that falls below acceptable humanitarian standards."*

Having further discussed the contradictory evidence about how many people lived in IDP camps, UTIAC concluded that "many thousands of people are reduced to living in circumstances of destitution" albeit that there was no reliable figure of how many people lived in such destitution in IDP camps. The determination continued:

> *"420. Whilst it is likely that those who do find themselves living in inadequate makeshift accommodation in an IDP camp will be experiencing adverse living conditions such as to engage the protection of article 3 of the ECHR, we do not see that it gives rise to an enhanced Article 15(c) risk since there is an insufficient nexus with the indiscriminate violence which, in any event, we have found not to be at such a high level that all civilians face a real risk of suffering serious harm. Nor does the evidence support the claim that there is an enhanced risk of forced recruitment to Al Shabaab for those in the IDP camps or that such a person is more likely to be caught up in an Al Shabaab attack …*
>
> *421. Other than those with no alternative to living in makeshift accommodation in an IDP camp, the humanitarian position in Mogadishu has continued to improve since the country guidance in AMM was published. The famine is confined to history … The "economic boom" has generated more opportunity for employment and … self-employment. For many returnees remittances will be important …*
>
> *422. The fact that we have rejected the view that there is a real risk of persecution or serious harm or ill treatment to civilian returnees in Mogadishu does not mean that no Somali national can succeed in a refugee or humanitarian protection or article 3 claim. Each case will fall to be decided on its own facts. As we have observed, there will need to be a careful assessment of all the circumstances of a particular individual."*

31. I entirely accept that some of the observations made in the course of the discussion of IDP camps may be taken to suggest that if a returning Somali national can show that he is likely to end up having to establish himself in an IDP camp, that would be sufficient to engage the protection of article 3. Yet such a stark proposition of cause and effect would be inconsistent with the article 3 jurisprudence of the Strasbourg Court and binding authority of the domestic courts. In my judgement the position is accurately stated in para 422. That draws a proper distinction between humanitarian protection and article 3 and recognises that the individual circumstances of the person concerned must be considered. An

appeal to article 3 which suggests that the person concerned would face impoverished conditions of living on removal to Somalia should, as the Strasbourg Court indicated in Sufi and Elmi at para 292, be viewed by reference to the test in the N case. Impoverished conditions which were the direct result of violent activities may be viewed differently as would cases where the risk suggested is of direct violence itself."

69. As in paragraph 28 above, it would appear that the factors in paragraphs 407(h) and 408 of MOJ (paragraphs (ix) to (xi) of the headnote) are relevant to internal relocation, with the reference to a person facing a return to Mogadishu not limited to those who have previously lived there but also those returning to there from elsewhere in Somalia. This conclusion is not undermined by the reference to the length of absence from Mogadishu which will simply be at the extreme end of the scale for those who have never lived there. The Court of Appeal did not expressly quote or comment on paragraphs 424 and 425 of MOJ (paragraph (xii) of the headnote), but did refer to the conflation of the issues in paragraphs 412 and in 420 to 422 (preceding the parts extracted for the headnote), as being more relevant to Article 3 rather than any need for humanitarian protection and without there being any reference this section being specifically relevant to the issue of internal relocation.

70. In these circumstances, I consider the factors in paragraphs (ix) to (xi) in respect of the Appellant for the purposes of internal relocation and also include (xii) given its status amongst the conflated issues is, to some extent uncertain, but would appear to have at least some relevance to a person internally relocating to Mogadishu.

71. The Appellant is not from Mogadishu and although there was some reference by the Respondent in 2016 to the Appellant having lived in Mogadishu with his wife (where her parents were born and where she had a house), this point has not been pursued since and the Appellant has maintained, including in his unchallenged oral evidence before me, that he had always lived in and around Luuq. In these circumstances, I find that the Appellant is not from Mogadishu nor is there sufficient evidence before me to establish that he has previously lived there nor spent any substantial period of time there. In terms of the Appellant's circumstances before departing from Somalia, these are that he was living in Luuq with his wife and family, working as a farmer and in a local garage, fixing tyres and brakes and with no significant personal experience of living in Mogadishu.

72. The Respondent has not challenged the Appellant's claim to have no remaining family in Somalia or the United Kingdom (his parents and sister having passed away and being divorced from his wife) such that I find that he will not have any family associations to call upon in Mogadishu. The Appellant is the member of a minority clan who do have a presence in Mogadishu, but as a minority clan are, in accordance with the country guidance, unlikely to be able to offer any significant assistance.

73. It is unclear as to how the Appellant has been supporting himself in the United Kingdom, other than for some periods of employment as a cleaner, kitchen porter and working in a friend's garage. The Appellant has not offered any detail as to periods of his employment or earnings, nor in the alternative, of any person who has been supporting him here. There is however nothing to suggest that he would have the benefit of any remittances from friends or associates here on return to Somalia; nor that he would have access to any other financial resources, in particular as his previous application under the facilitated returns scheme was refused. There is no evidence at all as to how the Appellant's journey to the Untied Kingdom was funded in 2003 but equally nothing to suggest that any such financial resources would be available to him now given the passage of time and passing of family members.

74. In terms of the factors to consider in the country guidance, this then leaves the Appellant's prospects of securing a livelihood on return, either through employment or self-employment; or, as in the country guidance, put another way, why the Appellant would not be able to access the economic opportunities available in Mogadishu.

75. The Appellant has a work history in both Somalia and the United Kingdom, albeit without evidence of any formal qualifications. The Appellant is in good health and still speaks Somali with at least some English. These are matters which, as a person returning from the United Kingdom put him in relatively good stead to access the economic opportunities in Mogadishu. The Appellant has not offered any reason as to why he would not be able to use his skills and experience, both from work and languages, to gain employment or be self-employed on return. Although he will not have any specific family, clan or financial support; he does have a real prospect of securing access to a livelihood on return and will not therefore face the prospect of living in circumstances which are unreasonable, unduly harsh, nor that fall below that which is acceptable in humanitarian protection terms. In terms of paragraph (xii) of the headnote to MOJ, the Appellant's means to establish a home and financial support are him accessing the economic opportunities in Mogadishu through employment or self-employment; from which he can support himself even without other forms of external support.

76. For these reasons I do not find that the Appellant would be at real risk of persecution on return to Mogadishu, he would not face an Article 15(c) risk there and it would not be unreasonable or unduly harsh for him to internally relocate to Mogadishu either. The Appellant's appeal on protection grounds is therefore dismissed.

77. For the avoidance of doubt, even if, contrary to the findings above in relation to cessation this is a case in which the Appellant had been granted refugee status in accordance with the Refugee Convention such that Article 1C(5) of the Refugee Convention on cessation applies; I would have in any event found the test therein to be satisfied in part on the findings set out above in relation to internal relocation and in part because, as

expressly recognised in MOJ itself, there had already been significant and durable change in Mogadishu by 2013/2014 and there is nothing in the evidence before me to suggest that that durable change has not been maintained to date. In these circumstances, there has been the required durable and significant improvements in Mogadishu, specifically in the eradication of clan based violence and removal of Al Shabaab, relevant to the Appellant's personal circumstances, to support a decision ceasing any refugee status.

Article 3 of the European Convention on Human Rights

78. In terms of the Article 3 threshold to be applied, the present case is not a "paradigm" case as in MSS v Belgium & Greece 53 EHRR 28. As confirmed by the Court of Appeal in Said, Article 3 was intended to protect persons from violations of their civil and political rights, not their social and economic rights. 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 in N v UK [2005] 2 AC 296 (as summarised by Lady Justice Arden in paragraph 34 of MA (Somalia) v Secretary of State for the Home Department [2018] EWCA Civ 994). The main conclusion on this point in Said is at paragraph 18 which states as follows:

> *"These cases demonstrate that to succeed in resisting removal on article 3 grounds on the basis of suggested poverty or deprivation on 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 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."*

79. The question of whether the risk of deprivation on return would lead to a violation of Article 3 of the European Convention on Human Rights was revisited in MA (Somalia). Lady Justice Arden, being bound by the decision in Said, confirmed that there is no violation of Article 3 by reason of a person being returned to a country which for economic reasons can not provide him with basic living standards. The Respondent in MA contended that the situation in Somalia was brought about by conflict, which is recognised by the European Court of Human Rights as an exception to the analysis. Lady Justice Arden however concluded at paragraph 63 that:

> *"… It is true that there has historically been severe conflict in Somalia, but, on the basis of MOJ, that would not necessarily be the cause of deprivation if the respondent were returned to Somalia now. The evidence is that there is no present reason why a person, with support from his family and/or prospects of employment, should face unacceptable living standards."*

80. Mr Nicholson submitted that the decisions of the Court of Appeal in Said and MA were simply wrong as to the correct test to be applied for Article 3 for return to Somalia, and/or that the decision on this point in MA was obiter. These decisions are however binding on the Upper Tribunal as to the correct test to be applied and have been expressly endorsed by the Court of Appeal in MI (Palestine) v Secretary of State for the Home Department [2018] EWCA Civ 1782 and by the Upper Tribunal in SB (refugee revocation; IDP camps) Somalia [2019] UKUT 00358 (IAC).

81. In the alternative, Mr Nicholson submitted that the standard in Sufi and Elmi is the appropriate one to apply in the present appeal because the Appellant would only be at risk of treatment violating Article 3 because he had to internally relocate to Mogadishu because of risk in his home area, caused by the conflict in Somalia. However, that misunderstands the relevant cause of poverty or deprivation, it must be conditions in Mogadishu or the IDP camps in particular that are caused by the conflict and/or absence of appropriate protection rather than the mere fact that a person may, on internal relocation, live in such a place. The risk of treatment on return to the place of internal relocation that may violate Article 3 must itself emanate from the conflict; not merely that the Appellant is relocating for that reason.

82. It is well established that in Article 3 cases where the risk to the individual is not from treatment emanating from intentionally inflicted acts of the public authorities in the receiving state or from those of non-State bodies in that country when the authorities there are unable to afford him appropriate protection; it is only in very exceptional circumstances that there would be a violation of Article 3. The principles are summarised by the European Court of Human Rights in N as follows:

> *"42. Aliens who are subject to expulsion cannot in principle claim entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling state. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the contracting state is not sufficient in itself to give rise to breach of art 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the contracting state may raise an issue under art 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. In D v UK … the very exceptional circumstances were that the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support.*
>
> *43. The court does not exclude that there may be other very exceptional cases where the humanitarian considerations are equally*

compelling. However, it considers that it should maintain the high threshold set in D v UK … and applied in its subsequent case law, which it regards as correct in principle, given that in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-state bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country.

44… Advances in medical science, together with social and economic differences between countries, entail that the level of treatment available in the Contracting State and the country of origin may vary considerably. While it is necessary, given the fundamental importance of Article 3 in the Convention system, for the Court to retain a degree of flexibility to prevent expulsion in very exceptional cases, Article 3 does not place an obligation on the Contracting State to alleviate such disparities through the provision of free and unlimited healthcare to all aliens without a right to stay within its jurisdiction. A finding to the contrary would place too great a burden on the Contracting States."

83. It was accepted on behalf of the Appellant that applying the threshold in N, he could not meet that standard to establish a real risk of a breach of Article 3 of the European Convention on Human Rights. For the avoidance of doubt, it is clear that he can not do so on the evidence available. In any event, it is very difficult to see on the facts of this case how the Appellant could meet the high threshold for a breach of Article 3 in circumstances where I have found that it would not be unreasonable or unduly harsh for him to internally relocate to Mogadishu. In essence, his claim under Article 3, applying the correct standard in N, can not succeed independently when the Appellant's asylum claim has failed, given the lower threshold for consideration of the reasonableness of internal relocation which need not reach the same level as required for a breach of Article 3.

84. As above, the First-tier Tribunal findings dismissing the Appellant's claim on humanitarian protection grounds and on Article 8 grounds were preserved such that no further findings on either of these issues are required. For all of these reasons, the Appellant's appeal on human rights grounds is dismissed.

Notice of Decision

For the reasons set out in the attached error of law decision, the making of the decision of the First-tier Tribunal did involve the making of a material error of law and as such it was necessary to set aside the decision.

The decision is remade as follows.

The appeal is dismissed on protection grounds.
The appeal is dismissed on human rights grounds.

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  Date 31st January 2020

Upper Tribunal Judge Jackson

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00072/2017

THE IMMIGRATION ACTS

Heard at Field House
On 22nd November 2018

Decision & Reasons Promulgated

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Before

THE HON LORD MATTHEWS
UPPER TRIBUNAL JUDGE JACKSON

Between

A Y A
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Nicholson of counsel, instructed by Thompson & Co Solicitors
For the Respondent: Mr T Wilding, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is the decision of the Tribunal, to which both members have contributed. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Kainth promulgated on 22 December 2017, in which the Appellant's appeal against the respondent's refusal of his protection and human rights claim (in the context of revocation of protection status and deportation), dated 19 May 2017 was dismissed.

2. The Appellant is a national of Somalia, born on 30 September 1972. He entered the United Kingdom on 5 August 2003 as the dependent of a refugee, his then wife, who had been granted indefinite leave to remain on 12 December 2002 on the basis that she was at risk of persecution in Somalia as a member of the Ashraf minority clan. The Appellant's entry was preceded by an entry clearance visa for indefinite leave to enter issued on 28 July 2003.

3. The Respondent made a decision to deport the Appellant pursuant to section 32(5) of the UK Borders Act 2007 and the Immigration Act 1971 on 23 April 2016. The Respondent also served a notice of intention to cease the Appellant's refugee status on 7 June 2016. Both of these decisions followed the Appellant's multiple convictions, including the trigger offence on 11 April 2016 for assault occasioning actual bodily harm for which he was sentenced to 16 months' imprisonment.

4. On 19 May 2017, the Respondent refused the Appellant's protection and human rights claim and further submissions made in response to the decisions above. In relation to the revocation of protection status, the Respondent considered that paragraph 339A(v) of the Immigration Rules and Article 1(C)(5) of the Refugee Convention applied to his case because the circumstances in connection with which he had been recognised as a refugee ceased to exist. Having considered the representations from the UNHCR on the specifics of the Appellant's case, the Respondent concluded that there had been a significant and enduring change in Somalia such that there was no longer persecution on the basis of clan membership in Mogadishu and the Appellant could return there without any breach of Article 3 of the European Convention on Human Rights, on the basis of clan membership or otherwise. The Respondent did not consider that there would be any significant obstacles to the Appellant's reintegration in Somalia, that he retained sufficient ties to Somalia and could gain lawful employment on return. The general security situation in Somalia did not place the Appellant at risk on return. For the same reasons it was considered that the Appellant was not eligible for humanitarian protection and in any event he was excluded from the same by paragraph 339D of the Immigration Rules.

5. The Respondent also considered the Appellant's right to respect for private and family life under Article 8 of the European Convention on Human Rights even though no claim was made under this provision. The Appellant had a wife and minor step-daughter in the United Kingdom, both of whom are British Citizens but it was not accepted that the Appellant was in a genuine and subsisting relationship with either of them and in any event it would not be unduly harsh for those family members either to relocate to Somalia with the Appellant or to remain in the United Kingdom without him if he were deported. The Appellant therefore did not meet the family exception in paragraph 399(a) of the Immigration Rules. Neither did he meet the private life exception in paragraph 399A of the Immigration Rules and there were no very compelling circumstances over

and above the exceptions to outweigh the very significant public interest in deporting the Appellant.

6. Judge Kainth dismissed the Appellant's appeal in a decision promulgated on 22 December 2017 on all grounds. We return to the detail and reasons for that decision below.

The appeal

7. The Appellant appeals on the grounds that the First-tier Tribunal did not properly apply the country guidance case of MOJ & Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) applicable to persons who would be internally relocating to Mogadishu, for whom the assessment is materially different, i.e. that paragraph (xii) of the head note should have been applied as opposed to paragraph (ix) of the same. Specifically, the First-tier Tribunal failed to take account of or recognise the fact that the Appellant came from Luuq and not from Mogadishu, such that any consideration of return to Mogadishu would have to be on the basis of internal relocation.

8. Separately, the Appellant disputes that he made the concession recorded in paragraph 51 of the decision of the First-tier Tribunal that there was some protection offered by the larger Benadin clan.

9. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 21 February 2018 on the basis that it was arguable that the First-tier Tribunal erred in its application of MOJ in relation to a person not from Mogadishu and arguably failed to adequately explain the findings in this regard. It was noted in the grant of permission that the decision appeared not to have been properly structured, with a conflation of separate issues around cessation, current risk not starting from the Appellant's home area, humanitarian protection and Article 3 of the European Convention on Human Rights. The parties were also notified of the need to address the Court of Appeal's decision in Secretary of State for the Home Department v Said [2016] EWCA Civ 442 and the unchallenged conclusion that the Appellant is excluded from humanitarian protection.

10. Subsequent to the grant of permission and prior to the error of law hearing, there were further developments in the authorities which were potentially relevant to the determination of this appeal and which the parties were further directed to address. Due to these developments and directions given to the parties to deal with the subsequent matters arising, the issues ultimately for determination in this appeal are in fact broader than what at first sight would appear to be a straightforward issue as to the application of MOJ, as set out in the original grounds of appeal. The issues do however fall within or are consequent upon the original grounds of appeal and grant of permission such that no amendment is required to them.

11. We are grateful to both Mr Nicholson and Mr Wilding for the detailed skeleton arguments submitted, identifying the issues in this appeal and dealing with a number of cases subsequent to the decision of the First-tier Tribunal which may/or do have a material bearing on this appeal and to the correct approach as to cases such as the present one.

12. The parties agree that there are two broad issues to determine in this appeal as to whether there is an error of law in the decision of the First-tier Tribunal such that it should be set aside and the appeal remade. The first issue is whether the First-tier Tribunal erred in its consideration of cessation of the Appellant's refugee status and the second is as to whether, if not, the First-tier Tribunal erred in dismissing the appeal under Article 3 of the European Convention on Human Rights.

13. In summary, the Appellant's position is that the First-tier Tribunal erred in failing to make any findings as to the Appellant's clan membership and risk on return to his home area (the Respondent having already accepted that he may be at risk of persecution in his home area, a conclusion which is consistent with the Respondent's "Country Policy and Information Note: Somalia: Majority clans and minority groups in south and central Somalia" June 2017) and in failing to appreciate that a return to Mogadishu would be a matter of internal relocation, such that there was a failure to apply the correct parts of MOJ. In any event, in the assessment of cessation undertaken by the First-tier Tribunal, there is a conflation of consideration of the issues under the Refugee Convention with those that would be relevant to the assessment under Article 3 of the European Convention on Human Rights. It was accepted on behalf of the Appellant that there should be symmetry between the consideration of a grant of refugee status and cessation (as in the Upper Tribunal's decision in MS (Art 1C(5)-Mogadishu) Somalia [2018] UKUT 00196 (IAC) and MA (Somalia) v Secretary of State for the Home Department [2018] EWCA Civ 994, although the parties disagreed as to the extent to which those decisions were consistent with each other) and in such circumstances the Appellant would only need to show that internal relocation to Mogadishu would be unreasonable or unduly harsh and he does not need to show that there would be a breach of Article 3 for these purposes.

14. In the alternative, the Appellant claims that to return to Mogadishu would be a breach of Article 3 of the European Convention on Human Rights on the basis of the standard in Sufi and Elmi v United Kingdom 54 EHRR 209 because the Appellant would only have to internally relocate to Mogadishu at all because of conflict reasons and it cannot therefore be said that the conditions he would be faced with there could be for anything other than conflict reasons. Counsel for the Appellant necessarily had to submit that the Court of Appeal were wrong in deciding that the test to be applied was that in N v UK [2005] 2 AC 296, as held in both Said and MA.

15. In summary, the Respondent's position is that the First-tier Tribunal's failure to consider the situation in the Appellant's home area is immaterial to the outcome of the appeal given the findings that in any event it is

reasonable for him to return to Mogadishu, in light of the presumption in MOJ that he would be able to access the advantages of the economic boom there. The issue of cessation being a mirror image of the grant of Refugee status meaning that the issue of whether a person could reasonably internally relocate was a necessary part of the consideration to the decision.

16. In relation to Article 3, the Respondent submitted that if the Appellant was unable to succeed on the first ground in relation to cessation, it was impossible to see how he could succeed on the higher Article 3 threshold on either test, but in any event the Upper Tribunal is bound by the decisions of the Court of Appeal in Said and MA to the effect that the applicable test in the circumstances of this appeal/in Somalia is that in N as conditions in IDP camps are caused primarily by severe droughts in Somalia rather than by reason of past conflicts there. In any event, on the findings of the First-tier Tribunal, there is no reason to suggest that the Appellant would end up in an IDP camp in Mogadishu.

Findings and reasons

17. At the outset, we turn in more detail to the findings made by the First-tier Tribunal and in particular the structure of those findings to determine whether the decision contains an error of law, before going on to determine whether it is necessary to set it aside if there is such an error. The starting point of the First-tier Tribunal's consideration is in paragraph 39 of the decision which sets out Article 1C(5) of the Refugee Convention, followed by consideration of the case of Abdulla and others v Bundesrepublik Deutshlan D Case C175/08 and others and Secretary of State for the Home Department v MM (Zimbabwe) [2017] EWCA Civ 797 and the representations from the UNHCR as well as the Appellant's own representations.

18. The country guidance in the head note of MOJ is then set out in full, followed by the conclusion that the Appellant would be returning as an ordinary civilian to Mogadishu, where there has been a durable change since the previous country guidance. By further reference to the Respondent's Country Information Guidance Report dated July 2016: "South and Central Somalia Country Information Security and Humanitarian Situation", the First-tier Tribunal concluded in paragraph 48 of the decision that during the period of 13 years since the Appellant left Somalia and was granted refugee status, the security landscape of Somalia in respect of the human rights situation of ethnic minorities has fundamentally improved.

19. The First-tier Tribunal noted that on behalf of the Appellant, none of the background or objective evidence in a significant bundle was specifically referred to or relied upon at the hearing and the Judge concluded that the Appellant's concerns about return to Somalia not being a safe country, and in which life would be very difficult for him, were no more than speculation and conjecture. The decision continues as follows:

> *"50. In my assessment of the evidence in the round, there were no significant obstacles to the appellant's reintegration into his country of birth. He is an adult and in good health. He has been able to make a life for himself in the United Kingdom (a foreign country) where he secured employment and enhanced his skills. There is no reason to suspect that the skills he has learnt in the United Kingdom could not be put to good effect upon return to Somalia. The appellant had the benefit of a Somali speaking interpreter. He has been the vast majority of his life in Somalia, some 30 years. He is fully familiar with local traditions and customs and spent his formative years there. He was educated up until the age of approximately 14 in Somalia. The appellant speaks some English albeit it is limited. He could put that to good use upon return. His ability to secure employment has been enhanced as a result of the skills learnt whilst in the UK. Whilst I accept that there may be challenges to life in Somalia, it cannot be said on the objective material and considering the case of MOJ that there would be a violation of Article 3 of the ECHR."*

20. It was not suggested on behalf of the Appellant that he was at risk of persecution or serious harm from Al-Shabaab because he was not a high-profile member of an institution representing the international community or the Somali government. In light of all of these reasons, the First-tier Tribunal concluded in paragraph 54 that the appellant no longer qualifies to remain in the United Kingdom because the position in his country of birth is now substantially different to that at the point of his entry to the United Kingdom in 2003.

21. In paragraph 55 of the decision, there is a simple conclusion that there is no real risk that the Appellant would be killed contrary to Article 2 on return, nor any real risk that his life under Article 3 would be breached on return.

22. We find that the First-tier Tribunal's approach to the question of cessation, or at least the reasons given for finding that the Appellant no longer qualifies to remain in the United Kingdom due to the substantially different situation now in Somalia is confused, conflating broader issues not relevant to the question of cessation and with a distinct lack of factual findings, clarity and relevant reasons for the conclusions reached.

23. The First-tier Tribunal refers in paragraph 53 only to the risk of persecution or serious harm from Al-Shabaab, which is only one part of the Appellant's representations as to why he should not be deported to Somalia, namely the general security situation there. There is no express consideration of the original reasons for the grant of Refugee status - although as a dependent of his wife, the Appellant claims to be a member of the same minority clan as her, had previously been targeted for that reason and claims to continue to be at risk on the same basis. There is no express finding as to whether the Appellant would be at risk on return now for these reasons, either in his home area or whether internal relocation to Mogadishu would be safe and reasonable. At its highest, there is a brief

statement as to the applicability of head note (ii) and (iii) of MOJ to the effect that in general there is no real risk of persecution on return to Mogadishu to an ordinary civilian. There is no express reference to paragraph (viii) of the head note in MOJ to the effect that there is no clan violence or discriminatory treatment, even for minority clan members in Mogadishu; nor any suggestion of its application to this Appellant.

24. Although there is a self-direction as to the extent of the change of circumstances necessary for a cessation decision, there is only a very brief conclusion that the security landscape of Somalia has fundamentally improved as in MOJ and later background material from the Respondent's reports as to the situation in 2016 and 2017. The First-tier Tribunal refers to an improvement in Somalia, rather than specifically in relation to Mogadishu, although the findings in MOJ and the references made to the background material which post-date it are specifically only about the situation in Mogadishu.

25. The First-tier Tribunal fails to recognise at this juncture that the Appellant is not from Mogadishu and it had already been accepted by the Respondent that the Appellant may be at risk in his home area, such that the situation in other parts of Somalia is not necessarily the same. Further, as there is no reference at all to the Appellant's home area, there is no recognition that a return to Mogadishu for this Appellant would be on the basis of internal relocation and not a return to his home area.

26. In paragraph 50 of the decision of the First-tier Tribunal, there is an assessment of the Appellant's personal circumstances and possible situation on return to Somalia (again the references are only to Somalia in general terms and not specifically in relation to Mogadishu), with the conclusion that there would be no violation of Article 3 of the European Convention on Human Rights. It is difficult to tell how this paragraph fits within the initial section dealing with cessation, to which Article 3 has no relevance for the reasons confirmed by the Court of Appeal in MA and which in any event does not really address the proper question to be considered in relation to Article 3, on either of the possible tests (either that in N or in Sufi and Elmi) and reads more as we would expect an assessment under paragraph 276ADE of the Immigration Rules to be structured. This paragraph in particular displays an error of law in the approach both to the issue of cessation (if that is in fact what it was directed to) and as to whether there is a breach of Article 3, not being directly on point or correct in law for either.

27. In all of these circumstances, we find that the First-tier Tribunal fails to engage with the relevant question on the issue of cessation, as to whether there has been a change of circumstances of a significant and non-temporary nature which is durable and which means that the basis on which the grant of Refugee status was made no longer exists. That may include the need for a proper assessment of the reasonableness of internal relocation on the facts of this case, but that is in our view entirely absent from the decision as well. For all of these reasons we find an error of law

in relation to this part of the decision of the First-tier Tribunal and in the conclusions found in relation to cessation and Article 3 in paragraphs 54 and 55 of the decision. As such, it is necessary to set aside the decision of the First-tier Tribunal.

28. On the basis identified above, we would not characterise the error by the First-tier Tribunal as a failure to apply the right part of the guidance in MOJ (on the basis of any distinction as to whether the Appellant is a returning resident to Mogadishu or would be internally relocating there), but rather a wholesale failure in the way it addressed the issue of cessation and a failure to make necessary and relevant findings of fact to determine that question. For these reasons, we cannot accept the submissions on behalf of the Respondent that any failure to consider the Appellant's home area is immaterial, because we cannot discern from the First-tier's Tribunal's decision any clear or sustainable findings that it would be reasonable for this Appellant to return to Mogadishu or therefore that cessation of his Refugee status was correct.

29. We are mindful that in reaching the conclusions we have above, it has not been necessary for the purposes of determining whether there has been a material error of law to set out our conclusions on the wider legal issues that arise on the facts of this case and upon which we have heard detailed submissions from the parties as to the precise nature of the exercise required for cessation (and in particular the consideration of internal relocation and the application of MOJ) and as to the correct test for Article 3 of the European Convention on Human Rights. Those submissions however remain highly relevant for the purposes of remaking the appeal on those two grounds and subject to any further submissions from the parties, will stand as their legal submissions on those points as part of the directions set out below. The parties are however invited to make further submissions either in writing or orally at the relisted hearing on the recently reported case of AMA (Article 1C(5) – proviso – internal relocation) Somalia [2019] UKUT 00011 (IAC).

30. The remaking of this appeal is reserved to UTJ Jackson in the Upper Tribunal in light of the detailed legal submissions already made in this case as to the correct approach to cessation and Article 3. We are also mindful that although further findings of fact are required, these are relatively limited and the appeal has been in progress for some time, including two First-tier Tribunal decisions which have both been set aside; such that in any event we would have retained the appeal in the Upper Tribunal for redetermination.

31. In paragraphs 55 and 56 of the decision, the First-tier Tribunal found that the Appellant was excluded from humanitarian protection by virtue of paragraph 339D(iii) of the Immigration Rules due to his criminal offences. There is no challenge to this conclusion in the onward appeal before us, nor to any of the findings in paragraph 57 onwards of the decision as to the assessment of deportation in accordance with paragraph 398 and following of the Immigration Rules and sections 117A to 117D of the

Nationality, Immigration and Asylum Act 2002, namely that the Appellant did not meet any of the exceptions to deportation and there were no very compelling circumstances which would outweigh the public interest in deportation. These findings are all therefore preserved.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

We set aside the decision of the First-tier Tribunal.

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.

Directions

(1) The appeal is adjourned to be relisted in the Upper Tribunal before UTJ Jackson on the first available date after 12 March 2019 with a time estimate of 2.5 hours. On the assumption that the Appellant will give further oral evidence, a Somali interpreter is required.

(2) The Appellant is to file and serve any further evidence upon which he wishes to rely no later than 14 days prior to the relisted hearing.

(3) The Appellant and Respondent are at liberty (but are not required) to file and serve any further written submissions or updated skeleton argument no later than 7 days prior to the relisted hearing.

Signed Date 11th February 2019

Upper Tribunal Judge Jackson