



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No.: UI-2022-006092

First-tier Tribunal Nos: PA/54825/2021  
IA/14688/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 7 August 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AOA (SOMALIA)  
(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Tony Melvin, Senior Home Office Presenting Officer  
For the Respondent: Mr Carlton Williams, Consultant, Fountain Solicitors

**Heard at Field House via Teams on 17 July 2023**

**Although the Secretary of State is the appellant in these proceedings before the Upper Tribunal, for convenience I will refer hereafter to the parties as they were before the First-tier Tribunal**  
**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. The Secretary of State appeals from the decision of First-tier Tribunal Judge G R Williams promulgated on 23 November 2022 (“the Decision”). By the Decision, the Judge allowed the appellant’s appeal on asylum, humanitarian protection and human rights grounds against the decision of the respondent made on 17 September 2021 to refuse to recognise him as a refugee, or as a person who was eligible for humanitarian protection, or that his removal to Somalia would breach his human rights.

### **Relevant Background**

2. The appellant is a national of Somalia, who was born and raised in the city of Jowhar in Hirshabelle State. The appellant claimed that he was a member of the minority Asharaf clan, and that his father was killed in 1996 as a direct result of the connection with the Asharaf clan.
3. When he was still a young child (approximately 7 or 8 years old) he was forced to work by members of other clans. He was abused and bullied throughout this time and would often have goods or money stolen from him by the members of majority clans.
4. After his father’s death, the appellant’s mother remarried. In 2012, the appellant’s stepfather joined Al-Shabaab. His stepfather attempted to recruit the appellant to join Al-Shabaab and threatened him as part of this process. The appellant was detained by members of the group and tortured. He was told that he would have to provide information to the group, acting as an informant, specifically in relation to the people who entered and left the hospital outside of which he was, at that time, selling goods. The appellant claimed that during his detention by the group, photographs were taken of him, and he was recorded by his captors. He was informed that the video would be distributed throughout the Al-Shabaab networks in the country, and that if he did not comply with the demands that had been made of him, he would be targeted by the group and action would be taken against him.
5. The appellant fled Jowhar with his mother after he was released from detention. They travelled to the appellant’s uncle’s farm in Mahaday to the north of Jowhar. Members of Al-Shabaab located them at the uncle’s farm, and the appellant’s mother and uncle were both executed. The appellant, however, managed to flee the country.
6. In the refusal letter (“RFRL”), the Secretary of State accepted almost all of the appellant’s factual narrative account. The only factual element not accepted was with regard to whether photographs and videos were taken of the appellant at the time that he was captured. The Secretary of State did not accept that such recordings or photographs were made, nor that they were then distributed to other Al-Shabaab groups in Somalia.

7. The Secretary of State thereby did not accept that the appellant was at risk from Al-Shabaab on return. Also, it was not accepted that the appellant was at risk in Somalia due to his membership of the minority Asharaf clan.
8. The Secretary of State relied on recent Country Guidance, and also the CPIN cited in the RFRL, for the proposition that the appellant could safely and reasonably relocate to Mogadishu without suffering undue hardship.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

9. The appellant's appeal came before Judge Williams sitting in the First-tier Tribunal at Manchester Piccadilly on 24 October 2022. Both parties were legally represented. The appellant gave oral evidence, and he was cross-examined. He also answered questions from the Judge.
10. In the Decision, the Judge gave an account of the submissions made by the representatives at paragraphs [20] to [28].
11. Ms Smith, the HOPO, submitted that the appellant had failed to adduce sufficient evidence to show that a video and photographs had been distributed across Somalia as claimed. This was speculation on his behalf. The appellant had no family or friends in Somalia who could verify such matters. She relied upon the respondent's CPIN as establishing that Mogadishu was now a safe place for the appellant, following Al-Shabaab's withdrawal from the city. The appellant could receive financial assistance from the Secretary of State if he chose to return to Mogadishu voluntarily. This would provide sufficient resources for the appellant to be able to re-establish himself in the country upon his return. Mogadishu was experiencing an economic boom, and the appellant would be able to find employment as he was a healthy, fit young male. If the appellant returned to Somalia, there was no reason as to why his siblings in the UK could not maintain contact with him there.
12. On behalf of the appellant, Mr Brown submitted that the appellant had been a credible witness and there was no reason on the lower standard not to believe the existence of the recording and its distribution - particularly in light of the acceptance that Al-Shabaab had killed the appellant's mother and uncle. The appellant's stepfather was a recruiter for Al-Shabaab. This fact would mean that the appellant himself would be regarded with suspicion in Somalia, and he would be unlikely to get support in Mogadishu. He was a member of a minority clan. He did not have skills, education or a network to secure a livelihood that would enable him to avoid a position where he would become destitute. The Country Guidance made clear that some people could not be returned to Mogadishu. They included those without clan support, such as the appellant. There was no basis for finding that the appellant's siblings would support him financially. The appellant had previously been forced into labour, and he had never been in formal or informal paid employment. The evidence showed that the appellant did not have the necessary

support network or links to be able to establish himself and relocate to Mogadishu. It would be unduly harsh to require him to do so. The appellant's stepfather's role as an Al-Shabaab recruiter, and his profile generally, would adversely affect the appellant's standing in Mogadishu. In addition, the appellant feared being forcibly recruited to Al-Shabaab. The appellant was at risk if he returned to Mogadishu, and therefore it was unduly harsh to require him to relocate there.

13. The Judge considered credibility at paragraphs [31] to [44]. His conclusion (at [44]) was that, having considered the evidence presented, the appellant had proven that photographs and a video were taken of him whilst he was captured by members of Al-Shabaab. He also found that those images and recordings were sent to members of the group throughout Somalia, both to intimidate the appellant and to compel him to carry out the demands that had been made. He found that the appellant had provided a credible, consistent and plausible account of all the events that occurred to him in Somalia. He found that his evidence could be relied upon.
14. At paragraph [46], the Judge said that he was satisfied on the evidence presented that, had the appellant been present at the farm when Al-Shabaab came, he would also have been killed alongside his mother and uncle.
15. At [47], the Judge cited the respondent's CPIN dated November 2020, in which it was said that AMISOM and the Somali Government had control of Mogadishu, but that Al-Shabaab continued to be able to conduct attacks in Mogadishu and other areas outside its control.
16. At [48], the Judge said that the available background evidence showed that Al-Shabaab continued to have the capacity and capability to move around the country, and in particular to enter Mogadishu to carry out targeted attacks. Whilst the Country Guidance made clear that ordinary civilians in Mogadishu were not likely to face a real risk of serious harm as the result of the general security situation in Mogadishu, the appellant was not in a position of being an ordinary civilian. He was someone with direct links to Al-Shabaab through his stepfather. He was someone who had directly gone against Al-Shabaab and had deliberately failed to carry out the order that was given to him. He had been targeted as a result of this failure. His image and likeness had been distributed amongst Al-Shabaab. He was warned of the consequences of non-compliance, and he was warned that he would be killed if he did not do as Al-Shabaab heeded. His mother and maternal uncle had both been killed as a direct result of Al-Shabaab seeking the appellant. The death of the appellant's mother and uncle occurred a considerable distance from the appellant's home after he had fled. Al-Shabaab tracked the appellant's location and took swift action against him. In the same way, they were able to conduct attacks within Mogadishu against specified targets:

“I find that the appellant is one such target and if returned to Mogadishu there is a reasonable degree of likelihood that the appellant would be tracked and killed by Al-Shabaab. Whilst the background evidence shows that Al-Shabaab do not, in general, target those with a low profile or locals, for the reason stated the appellant does not fall into such categories.”

17. On the issue of whether internal relocation to Mogadishu was reasonable from an economic survival perspective, or whether there was a real risk of the appellant facing destitution, the Judge cited paragraphs [12] to [14] of the head note to *OA (Somalia) CG* [2022] UKUT 00033 (IAC).

18. At [55], the Judge held that the appellant had no family remaining in Somalia. His siblings were in the UK, and he was in contact with them, but his evidence was that they did not support him financially. They could not or chose not to provide for him whilst he was in the UK, and there was no evidence to show that they would provide for him if he was returned to Somalia. There was nothing presented to undermine this evidence on this issue. The appellant did not have any friends remaining in Somalia. He was a member of a minority clan. He himself had been the subject of an enforced servitude by majority clan members. His selling of goods was deliberately interfered with such that items were regularly stolen from him and any profits taken. The appellant’s membership of a minority clan had done little to provide any form of protection or assistance to him in the past. He had not worked gainfully in the past. His employment had been interfered with and controlled by others. It could not accurately be described as any form of profitable, meaningful self-employment:

“It is reasonably likely that the appellant would suffer the same fate were he to relocate to Mogadishu.”

19. At [56], the Judge found that if he was returned to Mogadishu, the appellant would do so without any form of support network, friends or family. He would not be able to count upon any other person, family or clan to vouch for him in relation to the obtaining of accommodation. He would be unable to obtain employment, either, that would enable him to re-establish himself within the city:

“Notwithstanding the availability of the facilitated return scheme, I find that if forced to relocate internally within Somalia, by returning to Mogadishu, the appellant faces the prospect of living in circumstances falling below that which would be reasonable for internal relocation purposes. There is no reasonable internal relocation alternative available to the appellant within Somalia.”

### **The Grounds of Appeal**

20. Juliet McNamee of the Specialist Appeals Team settled the grounds of appeal to the Upper Tribunal on behalf of the Secretary of State.

21. Ground 1 was that the Judge had misdirected himself in law, and/or failed to give adequate reasons, at paragraph [48] of the decision, where the Judge found that the appellant was “*one such target*” and that if returned to Mogadishu there was a reasonable degree of likelihood that the appellant would be tracked and killed by Al-Shabaab. She relied on the CPIN dated May 2022, specifically paragraphs 2.5.3 to 2.5.8, which stated that Mogadishu was effectively safe, and that Al-Shebaab’s withdrawal from Mogadishu was complete.
22. Ground 2 was that the Judge had erred in law at paragraph [55] in holding that the appellant had no family remaining in Somalia, and that there was no evidence to show that the appellant’s siblings in the UK would provide for him if he were to return to Somalia; and that the appellant did not have any friends remaining in Somalia. Ms McNamee submitted that the Judge had failed to consider that financial assistance from the Home Office would help the appellant to re-establish himself in Somalia.

### **The Reasons for the Grant of Permission to Appeal**

23. On 4 January 2023 First-tier Tribunal Judge Parkes granted permission to appeal for the following reasons:

“The videoing of the appellant over 10 years ago may have taken place, but it is not clear that it would enable the appellant to be located in Mogadishu years later when Al-Shabaab have no presence in the capital and the appellant will have changed in that time. It is also arguable that the appellant’s access to assistance from the respondent was a factor that was overlooked in the Judge’s decision on the circumstances he would face if returned.”

### **The Hearing in the Upper Tribunal**

24. At the hearing before me to determine whether an error of law was made out, Mr Melvin developed the grounds of appeal. He acknowledged that the observation made by Judge Parkes, when giving reasons for granting permission, had not been specifically raised in the grounds. However, he submitted that it was an obvious point, and that it was a point that had been raised with Judge Williams. He was able to say this, as he had the Presenting Officer’s minute in front of him. The Judge had not adequately explained why the appellant would be a target for Al-Shabaab in Mogadishu when they no longer had a presence there, having regard to the fact that the appellant was a low-level ex-employee of Al-Shabaab who had been a young teenager when he had experienced problems with them.
25. As to Ground 2, the Judge had taken as a given that there would be no support from the appellant’s siblings in the UK. The appellant might have no previous experience of selling goods as a self-employed person - rather than as a person working for others - but it did not follow that the appellant would be unable to establish himself as a Trader in Mogadishu.

26. On behalf of the appellant, Mr Williams submitted that the Judge had given adequate and sustainable reasons for the findings of fact that the Secretary of State sought to impugn, and there was no merit in the claim that the Judge had failed to take account of relevant background evidence or relevant Country Guidance.
27. After hearing from Mr Melvin briefly in reply, I reserved my decision.

### **Discussion and Conclusions**

28. Mr Melvin informed me that, on examination of the CCD file, it was apparent that the CPIN relied on in the grounds of appeal was uploaded to the CCD file three days before the hearing before Judge Williams.
29. At paragraph 1.2 of the CPIN, it is stated that the CPIN contains an update to the assessment only to include the Upper Tribunal's new Country Guidance for Somalia in OA, promulgated on 2 February 2022. Otherwise, none of the sections of the CPIN have been updated since the previous iteration of the CPIN was published in November 2020.
30. At paragraph 2.53 of the CPIN, OA is quoted as follows:

“There were no very strong grounds, supported by cogent evidence, not to follow the assessment of MOJ concerning the security situation in Mogadishu. While the security situation remains volatile, in Somali terms there has been relative stability over the last 7 years. The withdrawal of Al-Shebaab remains [my emphasis] complete, and the city is under the control of Government forces and security officials. Terrorism and targeted bomb attacks continue to form a significant part of the security landscape and daily life, and so impact on humanitarian and other conditions accordingly, but it remains the case that, as held in MOJ, an ordinary civilian does not face a real risk of a serious and individual threat to their person by reason of indiscriminate violence ...”
31. At paragraph 2.54 of the CPIN, OA is quoted as stating that paragraph 407 of MOJ remains applicable.
32. Although this is not a point raised in the grounds of appeal, or in Mr Melvin's oral submissions, I have considered whether the Judge inadvertently misdirected himself on the applicable background evidence by citing the CPIN of November 2020 rather than the CPIN of May 2022.
33. I answer this question in the negative. Having compared the CPIN of November 2020 with the CPIN of May 2022 I do not consider that there is any material difference in the assessment of the security situation in Mogadishu.
34. The Judge gave two reasons as to why he considered that the internal relocation alternative was not available to the appellant. The first was the

real risk of him being targeted in Mogadishu by Al-Shabaab, and the second was the appellant facing a real risk of destitution.

35. I consider that the error of law challenge to the second proposition is particularly weak. It is simply asserted in Ground 2 that the Judge failed to take into account the Facilitated Return Scheme. However, it is clear that the Judge expressly took into account the availability of the Facilitated Return Scheme at paragraph [56].

36. It is not suggested in the Country Guidance that the Facilitated Return Scheme will enable a beneficiary to survive in Mogadishu indefinitely. The Judge had express regard to paragraph 14 of the head note in *OA*, which provides as follows:

*“It will 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 would be reasonable for internal relocation purposes.”*

37. It was open to the Judge to find that the appellant would have no clan or family support, and that he would not be in receipt of remittances from abroad. Although Mr Melvin questioned the latter finding in the course of his oral submissions, neither he nor the grounds of appeal identify any respect in which the Judge’s finding could be said to be erroneous in law. Similarly, while Mr Melvin also queried in oral submissions the proposition that the appellant would have no real prospect of securing access to a livelihood on return, once the money from the Facilitated Return Scheme had run out, again there is no explanation as why this finding was not reasonably open to the Judge. Applying the guidance of the Court of Appeal in *Volpi and another v Volpi* [2022] EWCA Civ 464, I cannot say that the Judge’s finding - that the appellant faces the prospect of living in circumstances falling below that which would be reasonable for internal relocation purposes - is one that no reasonable judge could have made. It is not clearly wrong.

38. As pleaded, Ground 1 is also intrinsically weak. The Judge did not ignore the background evidence that Al-Shabaab’s withdrawal from Mogadishu remained complete. The Judge addressed directly the argument that the appellant would not be a target because he was not in the category of persons ordinarily at risk of being targeted by Al-Shabaab in Mogadishu, such as persons with a visible role in working for the Government. Since the Judge expressly took into account the relevant background evidence, Ground 1 is not made out in the terms that it is advanced in the grounds of appeal.

39. I accept that Ground 1 is put more persuasively, and gains greater traction, by its formulation by Judge Parkes when granting permission to appeal. It is reasonable to question the likelihood of Al-Shabaab having either the means or the inclination to identify the appellant as a target in



Mogadishu so long after the events which triggered his flight from Somalia, in circumstances where the appellant would not be drawing attention to himself as someone who had crossed Al-Shabaab in the past.

40. However, the threshold for a challenge on perversity grounds is a high one, and in any event, Mr Melvin clarified in oral submissions that the Secretary of State case was not that the Judge's finding was so unreasonable that no reasonable judge could have made it, but only that the Judge had not adequately explained why the appellant was at real risk of being a target of Al-Shabaab, having regard to the background evidence.
41. I consider that the Judge has given adequate reasons for reaching the conclusion that the appellant is at real risk of being a target of Al-Shabaab in Mogadishu, notwithstanding the background evidence. It is a conclusion with which reasonable people may disagree, but it is not a conclusion that is clearly wrong.
42. But even if I am wrong about that, no error is made out under Ground 2, and accordingly there is no material error in the Judge's conclusion that the appellant cannot reasonably be expected to relocate to Mogadishu in order to avoid persecution by Al-Shabaab in areas of Somalia where they are in control. Even if the Judge was wrong to find that the appellant would not be safe from reprisals by Al-Shabaab in Mogadishu, no error of law is made out with regard to his finding that internal relocation to Mogadishu would not be reasonable.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal by the Secretary of State to the Upper Tribunal is dismissed.

### **Anonymity**

The First-tier Tribunal made an anonymity direction in favour of the appellant, and I consider that it is appropriate that the appellant continues to enjoy anonymity for these proceedings in the Upper Tribunal.

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
27 July 2023