Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00347/2013

THE IMMIGRATION ACTS

Heard at : Laganside Courts **Determination Promulgated**
On : 22nd August 2013

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Before

Upper Tribunal Judge McKee

Between

MUSE MOHAMMOUD HUSSEIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Stuart McTaggart, instructed by Crawford & Co. Solicitors
For the Respondent: Mr Andrew Mullen of the Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant is said to have arrived in Belfast on 11th November last year, the day after leaving Somalia. He applied for asylum, but the application was refused in a letter dated 19th December 2012, and on the same day a decision was taken to remove Mr Hussein as an illegal entrant. An appeal against that decision came before the First-tier Tribunal on 14th February 2013, and was dismissed by Judge

Turkington, who was "*unable to accept any part of the evidence of the Appellant insofar as it relates to his claimed persecution by Al Shabaab and his family relations*." He had "*sought to build an asylum claim around that of a person who has been granted asylum*", i.e. a Somali man who was said to be the appellant's brother ~ a relationship not accepted by the respondent. The judge was not in a position to make a finding on whether he was or not, but "*the inconsistencies in the evidence, the lies and the implausibilities all add up in their cumulative effect to a position where I do not believe a word this Appellant says*."

2. Judge Turkington was constrained, however, to accept ~ because it had been accepted by the respondent ~ that the appellant hailed from the village of Ceel Ahmed in the Lower Shabelle region of Somalia, and that he belonged to the Ashraf minority. The judge observed that in his interview, Mr Hussein had stated that, prior to the presence of the Union of Islamic Courts and later Al Shabaab, the village had been controlled by Hawiye war lords. But he had not personally encountered any problems under Hawiye rule. It was fear of Al Shabaab that had caused him to flee Somalia, after he had been pressed into their service and had escaped from their clutches. He had not, commented the judge, "*sought to make the case that he is at risk by virtue of his Ashraf ethnicity*", and no evidence had been put before him that the appellant would be at risk on that account if he returned to Somalia.

3. What about the risk from Al Shabaab in his home area? The country background material indicated to Judge Turkington that AMISOM and Somali government troops, having expelled Al Shabaab from Mogadishu, had gone on to retake the urban centres of Merka and Kismayo. According to the appellant, Ceel Ahmed is near Golweyn, which in turn is near Merka, and Judge Turkington surmised that Al Shabaab were no longer well enough established in the Lower Shabelle to be able to round up young men to fight for them, which was what the appellant claimed to fear.

4. Although Judge Turkington cited *AMM* [2011] UKUT 445 (IAC), this was not in relation to a possible 'internal flight alternative' to Mogadishu. Rather, it was to point up the lack of a real risk to the appellant because of his Ashraf ethnicity. According to paragraph 370 of the country guidance, there was no evidence before the panel "*of anything to suggest that, certainly in comparison with the time before the rise of the Union of Islamic Courts, a returnee to Mogadishu, of whatever clan, would face a real risk of persecution by reason of his or her clan. The Gundel reports indicated that a community such as the Reer Hamar was no longer the subject of targeted violence, albeit that they might still be the subject of discrimination*." Judge Turkington found that the appellant could be safely returned to Mogadishu, but this would just be a staging post on his way back to the Lower Shabelle, and there was no evidence that he would suffer serious harm *en route* to his home town.

5. The robust negative credibility findings of the First-tier Tribunal have not been challenged, but leave to appeal to the Upper Tribunal was sought and granted on three grounds of a general nature, not dependent on the truth of the appellant's account. First, the area from which the appellant hailed was said still to be under the control of Al Shabaab, and hence not a safe place for the appellant to live. Secondly, the finding in *AMM* that there was a real risk of an Article 15(c) breach for the generality of Somalis returning to Mogadishu had not been addressed. Thirdly, as an Ashraf there was nowhere in Somalia to which the appellant could return in safety.

6. Although a 'Rule 24 Response' from the Specialist Appeals Team indicated that the respondent did not oppose the application for leave to appeal, provided the adverse credibility findings were preserved, the Upper Tribunal is not bound by such a concession, and when the appeal came before me I intimated to the representatives that it was still to be established whether the First-tier Tribunal had made a material error of law. Mr McTaggart tried most persuasively to demonstrate that this was indeed the case, and was ably rebutted by Mr Mullen. At the end of the hearing I reserved my determination, and having given the matter much thought I can now set out my reasons in fairly short compass.

7. While AMISOM and Federal Government troops have certainly pushed Al Shabaab out of Mogadishu, Afgoye, Marka and Kismayo, Judge Turkington was wrong to suppose that "*Al Shaabab have been driven out of the lower Shabelle*." Mr McTaggart drew my attention to some maps at the rear of the Appellant's Bundle showing that, as of October 2012 and again as of December, much of the Lower Shabelle was still under the control of Al Shabaab. This is confirmed by the Country of Origin Information Report on Somalia, dated 5th August 2013 and handed up by Mr Mullen. This states at 1.34 that "*areas of the southern part of Lower Shabelle are controlled by al-Shabaab*", which still uses the seaport of Brava, and that "*al-Shabaab controls approximately 50% of the rural areas in the southern part of Lower Shabelle*." Lying near Marka, Ceel Ahmed is actually in the northern part of Lower Shabelle. So while the judge was wrong to suppose that Al Shabaab have been driven out of Lower Shabelle altogether, they may no longer be in control of Ceel Ahmed.

8. But even if they are, it must be remembered that not one word of what the appellant says happened to him in Ceel Ahmed has been believed. Hence, it can be inferred that he has never been forcibly recruited by Al Shabaab in the past. Nothing in the country background material before the First-tier Tribunal and now before me shows that Al Shabaab are forcibly recruiting unwilling helpers in the Lower Shabelle. What this material does show, as Mr McTaggart pointed out, is that Al Shabaab are using hit-and –run tactics against targets in the areas now controlled by government forces. But such tactics require trained guerrillas, not civilians pressed unwillingly into service. And such tactics do not amount to a generalised risk to civilians in the areas which are <u>not</u> yet controlled by government forces. So it cannot be said that Judge Turkington erred in law by finding that the appellant would not be at risk from Al Shabaab in his home area.

9. While the head note to *AMM* says that "*there remains in general a real risk of Article 15(c) harm for the majority of those returning to [Mogadishu] after a significant period of time abroad*", the country guidance panel had in mind people who were going to stay in or around Mogadishu, rather than just passing through on their way to another part of Somalia. Besides, the appellant had not spent a significant period of time abroad when he appeared before the First-Tier Tribunal. He had only been away from Somalia for four months. The ground of appeal based upon the Qualification Directive therefore falls way.

10. The third ground relies upon the country guidance in *NM* [2005] UKAIT 76 for the proposition that a member of the Ashraf minority will be at risk of persecution on

return to Somalia. Practice Direction 12.2 requires country guidance to be treated as authoritative in any subsequent appeal, so far as that appeal "*depends upon the same or similar evidence*." The evidence from the appellant here was very different from that before the AIT in *NM*. When the panel in *NM* was taking evidence early in the year 2005, the problems in Somalia mostly stemmed from the struggles between clan-based warlords, with minority groups falling prey to the depredations of armed militias. Subsequently, all that changed. Tired of this internecine clan rivalry, the population largely welcomed the Union of Islamic Courts, despite their imposition of Sharia law. Their dominance was short-lived, thanks to military intervention by Ethiopia, but Al Shabaab emerged to carry on a similar programme. Now, however, the forces of the legitimate government, with the support of the AMISOM contingents, have established government control over a great part of Somalia. Even when the Hawiye war lords were in control of his home area, the appellant says that he had no problems from them. Country guidance is not a straight-jacket, and Judge Turkington was clearly entitled to find, on the evidence before him, that there would be no risk to the appellant, either in his home area or in Mogadishu, because he belonged to the Ashraf folk.

DECISION

The appeal is dismissed.

Richard McKee
Judge of the Upper Tribunal

6th September 2013