Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01942/2013

THE IMMIGRATION ACTS

Heard at Nottingham Magistrates' Court	**Determination Promulgated**
On 26 August 2014	**On 26 September 2014**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

AHMED DAQ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Kiai instructed by Wilson Solicitors LLP
For the Respondent: Mr McVeety, Senior Presenting Officer

DETERMINATION AND REASONS

INTRODUCTION

1. This appeal arises out of a challenge to the determination of First-tier Tribunal Judge North and Mr F. Jamieson JP (the panel). For reasons given in their decision dated 2 July 2014 the panel dismissed the appeal under the Refugee Convention, on human rights grounds and on grounds that the decision was not in accordance with the law. The decision appealed against was that s.32(5) of the UK Borders Act 2007 applied to the

appellant resulting in a deportation order dated 19 September 2013. The grounds of appeal to the FtT argued that the s.32 decision was that it was not in accordance with the law, unlawful under s.6 of the Human Rights Act 1998, not in accordance with the Immigration Rules and that removal would be in breach of the United Kingdom's obligations under the Refugee Convention.

2. The appellant is a national of Somalia where he was born on 28 August 1977. He arrived in the United Kingdom on 2 August 1997 and embarked on a criminal career culminating in a conviction on 10 July 2012 at the Central Criminal Court of theft from a person of another for which he was sentenced to two years' imprisonment.

3. Having regard to the nature of the challenge to the panel's decision it is not necessary to dwell on the nature and extent of the appellant's criminal activity except to note that, in summary, between 1998 and 2005, he was convicted of a wide range of offences ranging from assault occasioning actual bodily harm, possession of an offensive weapon in a public place, using threatening abusive insulting words or behaviour with intent to cause fear or provocation of violence, theft, shoplifting, robbery, burglary with intent to steal and being drunk and disorderly. On 15 December 2003 he was sentenced to a total of two years' imprisonment on two counts of burglary and one of having an offensive weapon. A conviction on 21 March 2005 of burglary led to a sentence of 30 months imprisonment on 4 May 2005.

4. As to his immigration history, the appellant claimed asylum on arrival which was refused but he was granted exceptional leave to remain until 13 April 1999. His asylum claim was revived in 2007 when he was served with notice of a decision to make a deportation order. His appeal against that decision was dismissed after a hearing on 24 January 2008. After error of law was found in the decision in June that year a further hearing took place before the First-tier Tribunal in August 2008 resulting in the appeal again being dismissed. On appeal to the Court of Appeal the case was remitted for reconsideration limited to the issue whether the appellant was entitled to protection under Article 3 further to an order dated 12 January 2010. That task was undertaken by UTJ Jordan who for reasons given in his determination dated 11 May 2011 dismissed the appeal. He found that Mogadishu where the appellant had been born and educated was no longer safe as a place to live. UTJ Jordan found however that as a Darod, sub-clan the Marehan, the appellant could relocate to Gedo, the place of origin of that clan.

THE APPEAL BEFORE THE FtT

5. Turning to the decision that has given rise to this appeal, the panel heard evidence from the appellant. The other evidence before it included a report by a country expert, Mary Harper as well as country information including a range of reports from UNHCR, news agencies and NGOs. It heard submissions on a range of material including the country guidance

decision in *AMM & Others (conflict – humanitarian crisis; returnees; FGM*) [2011] UKUT 00445. The panel reached the following conclusions:

(i) The general situation in Mogadishu had improved significantly since *AMM* was decided and the level of violence did not now engage Article 15(c) for all but the narrow group of returnees identified in *AMM*. As a consequence the appellant did not require protection under this provision on his return to that city.

(ii) Although the appellant's clan affiliation did not mean that he would necessarily receive help or protection from friends or fellow clan members, he is less likely to face difficulty than those with no such clan associations. The appellant would not face persecution in Somalia for having tattoos/marks/injuries or because he had adopted a western lifestyle whilst in the UK. Whilst such matters might cause him low-level societal harassment it would not be so serious as to amount to persecutory ill-treatment.

(iii) Whilst it was accepted the appellant may face some societal approbation (because of his criminal offending) it did not accept that this would amount to persecutory ill-treatment.

(iv) The appellant would be returning to Somalia as a single relatively young man with bilingual skills and someone of resilient nature being prepared to breach his curfew order and engage in some disruptive behaviour. There were therefore no concerns about him being vulnerable and he could be expected to cope better than most in re-establishing himself in Somalia on return.

(v) The appellant would be returning at a time when many of the diaspora had chosen to return and the appellant will not be necessarily identified as someone imputed with unacceptable religious opinions or westernised values by reason of his appearance or time spent in this country.

(vi) In the alternative the appellant could safely relocate to Gedo assisted by his clan affiliations.

6. The panel also reached a finding on Article 8 grounds but these are not subject to challenge.

7. Ms Kiai helpfully summarised her challenge as this: whilst it was open to the panel to depart from country guidance, it had failed to give adequate reasons for doing so. It had not given adequate reasons for rejecting the conclusions of Mary Harper or those in the UNHCR Reports.

DISCUSSION

8. A reasons challenge as opposed to a perversity one frequently arises in this jurisdiction. It is not necessary for the Tribunal to set out its conclusions on all the evidence before it or on every point raised. It is

necessary to examine the determination to see whether the reasons were "... sufficiently detailed to show the principles upon which [the tribunal] acted and the reasons for its decision" - see the observations of Beatson LJ in *Haleemudeen v SSHD* [2014] EWCA Civ 558 at paragraph 32(*ff*).

9. Notwithstanding the acceptance by Ms Kiai that the challenge was one of adequacy of reasoning, the grounds do raise rationality with particular reference to the panel's consideration of the appellant's resilience that would prevent him being vulnerable. The test for such a challenge is a demanding one. The grounds as formulated also argue that the panel had misdirected itself as to the law in being satisfied that the general situation in Mogadishu had improved significantly since *AMM*. Taking each point in the grounds in turn:

The Respondent supplied no evidence on Somalia.

10. I accept Mr McVeety's submission that this is not correct. The respondent's reasons letter refers to country information including the Economist Intelligence Unit Report dated 1 November 2011, the COI Report on Somalia dated January 2012 and a Country Bulletin Brief dated February 2013. Somalia Bulletins dated August 2012 and a COI Report dated the same month are also referred to. Whether or not to depart from country guidance is not simply dependent upon the respondent adducing new material. It is open to a Tribunal to re-evaluate country guidance in the light of all the material irrespective of its provider.

The panel failed to identify which parts of the evidence supported the finding of a material change in Mogadishu since *AMM*

11. After a comprehensive review which included the conclusions of Judge Jordan between paragraphs [13] and [19], the panel carried out its analysis of the evidence and gave reasons why it concluded why the general situation in Mogadishu had improved significantly. Specific reference is made to the respondent's assertions and the reports provided by the appellant including the UNHCR Reports and the expert report by Mary Harper. Its conclusions are succinct but sufficiently clear and focused to demonstrate that an evaluation was carried out and that the panel, as indicated in [15], had considered all of the evidence.

12. In particular the panel noted the evidence by UNHCR in its report of January 2013 that the authority of clan elders had been eroded and Ms Harper's evidence that Mogadishu remained highly insecure since Al-Shabab had conducted its tactical withdrawal in 2011. The panel also noted the positive developments recorded in her evidence as well as the negatives including the risks to civilians. In my view, the panel was entitled to note that those risks occurred in public places such as restaurants, hotels, roadsides and roundabouts. It was also entitled to note Ms Harper's evidence that Al-Shabab were no longer conducting large-scale co-ordinated recruitment drives in the city.

13. Ms Kiai argued that the panel had only summarised the beginning of Ms Harper's report and not the subsequent detail. The report is divided between the general situation and a consideration under the heading of "specific factors, tattoos, length of time spent in the UK, criminal activity and lack of Marehan clan membership". These aspects are considered at [17] to [19] of the determination and include reference to the evidence of Mary Harper. As with the general situation, I am satisfied that the panel gave succinct but sustainable reasons for its individual findings. This ground is without merit.

The Panel failed to give any/adequate reasons why it rejected evidence relevant to Article 15(c) risk in Mogadishu

14. The reasons given by the panel refer to Mary Harper's report and the UNHCR Report of June 2014 and in addition Amnesty International's opinion. This is really a repetition of the point considered above and it does not raise anything new of substance.

Mogadishu destitution

15. Under this heading, the grounds assert that the panel's findings regarding specific risk factors contained material errors illustrated by unclear or irrational findings regarding the appellant's resilience and previous use of aliases. It is also argued the panel failed to give reasons for rejection of material evidence, in particular her concern regarding the difficulty in keeping secrets in Somalia due to the strong oral culture. The extent of the rationality challenge is limited to this aspect and it is without merit. I consider that it was rationally open to the panel to reflect on the nature of the appellant's character when deciding whether he would be vulnerable and I consider they were entitled to view him as someone who "could be expected to cope better than most in re-establishing himself in Somalia on his return". The panel also addressed the consequences of the appellant's criminal offending coming to light and it was rationally entitled to observe that he may face some "societal [dis]approbation" but that this would not amount to persecutory ill-treatment.

16. The grounds do not criticise the panel's treatment of the issue of tattoos in relation to Mogadishu. Ms Kiai submitted that the risk they raised applied also to the city. Ms Harper explains that Somalis she had spoken to about the tattoos would place the appellant at increased risk of serious harm if Al-Shabab became aware of them. Furthermore she considered he might come into contact with Al-Shabab or their sympathisers in Mogadishu and would almost certainly do so with them in Gedo as it controls part of a region. These would identify him as a member of the diaspora and some Somalis she had spoken to said that tattoos were considered to be a sign of homosexuality.

17. The panel referred to the decision by UTJ Jordan that the tattoos on the appellant's arm (which bear the name of a former partner and Chinese characters) did not constitute a specific risk. The panel went on to explain

it had considered the evidence of Ms Harper but concluded that this did not give a reason to interfere with the UTJ Jordan's findings. Its reasoning is succinct but cogent and sufficient to demonstrate that the issue was addressed and dealt with.

18. Ms Kiai submitted that Ms Harper's evidence was based on the continuing presence of Al-Shabab in Mogadishu, however her focus appeared to be on the risks the appellant would specifically encounter because of them in the event of contact with Al-Shabab and Gedo which I will turn to shortly. I am satisfied that the panel had proper regard to the combined factors of residence in the west, the tattoos and the appellant's criminal past and gave a proper place for these factors in its reasoning on risk in Mogadishu. The panel gave adequate reasons for finding the appellant would be able to cope.

19. The panel did not specifically address the issue of imputed homosexuality. This is not raised in the grounds of challenge. The reasoning given by Ms Harper of this aspect being a risk factor is somewhat loose. I am satisfied that if the panel had addressed this aspect specifically, it would inevitably have concluded that the robust nature of the appellant's character would provide him with the ability to cope. Such a conclusion would have been rationally open to them. The panel concluded that the appellant may face some "societal [dis]approbation" indicating that it clearly understood the evidence and it carried out a properly reasoned risk assessment.

20. The next ground under this heading challenges the conclusion that the appellant could stay in an IDP camp contrary to *AMM*. Ms Kiai accepted that it would only be vulnerable people who would be at risk in an IDP camp. I accept Mr McVeety's submission that the appellant did not fall in the vulnerable category for the reasons given by the panel; they were entitled to conclude that the appellant would be fit for work and would be with his skills able to avoid having to live in such circumstances.

21. In the light of the above I am not persuaded that the panel erred in law as alleged. Its consideration of internal flight was on a hypothetical basis and therefore consideration of this aspect is academic. But as I heard submissions I have these observations to make as to the assertions under the heading in the grounds, Gedo.

Gedo

22. The challenge raises the following points:

    (i) Misdirection of law by reliance on withdrawn country guidance: *AM (route of return)* [2011] UKUT 54 (IAC).

    (ii) A failure to give adequate reasons in preferring evidence before UTJ Jordan in 2011 over recent evidence with reference to

    – UNHCR Report June 2014

– Ms Harper's report that a tattoo would be an adverse indicator

– the appellant's non-belief in Islam.

It would be unreasonable to expect a returnee to relocate to an IDP camp

Further – relocation to an Al-Shabab controlled area is out of the question: *AMM*

Relocation to a non-Al-Shabab controlled area may be possible for a person who has a clan or strong family connection.

(iii) The panel failed to consider the risk of destitution in Gedo based on him never having lived there and not having a nuclear family to rely on for support.

23. It is fair to say that of the specific risk factors Ms Harper identified in her report, the presence of tattoos, the length of time in the UK and lack of knowledge regarding Islam raised the prospect of heightened risk were the appellant to encounter Al-Shabab. She observed that the safest way for him to travel from Mogadishu to Gedo would be by air and as to Gedo itself she considered that the region was in part still controlled by Al-Shabab.

24. The panel correctly noted the submission that the appellant would suffer ill-treatment at the hands of Al-Shabab in Gedo or en route as well as Ms Harper's disagreement with UTJ Jordan's conclusions that Gedo was potentially safe.

25. If there is a criticism to make of the panel's reasoning on internal flight, it is that they did not make a clear finding regarding the presence of Al-Shabab in Gedo or in the course of any over land journey there. It referred to the evidence of reports of Al-Shabab losing parts of Gedo to combined government forces and of the administration based in Kismayo wanting to expand into the Gedo region.

26. The guidance in *AMM* was clear that a person from an Al-Shabab area who can show they do not genuinely adhere to Al-Shabab's ethos will have a good claim to refugee protection. This guidance came after the decision of UTJ Jordan and it is evident that the panel did not give adequate reasons for departing from it.

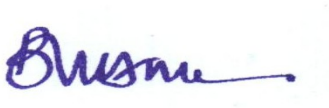
27. I do not consider however that this error is material because of the reasons given above regarding the safety of the panel's conclusions regarding Mogadishu thus rendering internal flight alternative irrelevant.

28. By way of foot note I drew the attention of the parties to the case of *K.A.B. v Sweden (Application No. 886/11)* in which the Strasbourg Court reached a conclusion regarding Article 3 risk (as opposed to Article 15(c)) in Mogadishu in September 2013. I drew the parties' attention to this case at

the outset of the hearing in case it had relevance to the materiality of any error found. As it turns out it did not.

29. In summary I am not persuaded that the determination of the panel is infected by a material error. This appeal is dismissed.

Signed Date 25 September 2014



Upper Tribunal Judge Dawson