



IAC-AH-SAR-VI

**Upper Tribunal
(Immigration and Asylum Chamber)
Oral Judgment**

Appeal Number: AA/12711/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20 April 2016**

**Decision & Reasons Promulgated
On 5 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AM

(ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr A Masood, instructed by Aden & Co Solicitors

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the respondent. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The respondent (hereinafter “the claimant”) is a citizen of Somalia born on [] 1997 whose application for asylum and humanitarian protection was refused by the appellant (hereinafter “the Secretary of State”). His ensuing appeal to the First-tier Tribunal was heard by Judge Seelhoff who, in a decision following a hearing on 14 January 2016, allowed the appeal.
2. The claimant is from Mogadishu and came to the UK via Ethiopia on 20 September 2012 using a Swedish passport. He was 15 at the time. His sister lives in the UK (having left Somalia in 2007 and been granted asylum) with her husband and children and the claimant now lives with them.
3. The basis of the claimant’s claim is that he is a member of a minority clan who has been persecuted and who would be at risk on return to Mogadishu. His account of persecution and ill treatment he and his family have experienced in Somalia includes the following:
 - (a) His father was abducted in 1999.
 - (b) His mother was killed in an attack in 2007, which he understands occurred because of her ethnicity.
 - (c) In 2011 he and other male children in his district were ordered by Al-Shabab to gather on a football pitch in order to be recruited. His aunt hid him and when this was discovered she was beaten and his sisters abducted. He then lived with an uncle and worked to support himself. A local child threatened to report him to Al-Shabab. Fearing the consequences of this, arrangements were made for him to leave Somalia.

Decision of the First-tier Tribunal

4. The First-tier Tribunal, having heard evidence from the claimant and his sister, accepted their accounts – including the events described in paragraph [3] above - as being broadly credible.
5. The First-tier Tribunal then considered the appeal in light of the country guidance case *MOJ & Ors (Returns to Mogadishu) Somalia* CG [2014] UKUT 00442 (IAC). After citing in full the relevant parts of the headnote to *MOJ*, the First tier Tribunal, at paragraphs [25] – [29], applied *MOJ* to the circumstances of the claimant. At paragraph [30] it concluded as follows:

“In accordance with MOJ I do find it likely that this appellant will end up living in one of the IDP camps in conditions in which the panel in MOJ held would likely fall below acceptable humanitarian standards. Accordingly I find that the appellant is entitled to humanitarian protection in the UK”.

6. The First-tier Tribunal briefly considered the claimant's claim under Article 8 ECHR and found that he would face very significant obstacles integrating into Somalia such that paragraph 276ADE(vi) of the Immigration Rules was satisfied. The reasoning given for this finding was that the factors giving rise to the need for humanitarian protection amounted to "very significant obstacles" that would be faced by the claimant.

Grounds of appeal and submissions

7. The first ground of appeal submits that the First-tier Tribunal failed to properly engage with *MOJ* and that the evidence does not support a finding that the claimant would end up in an IDP camp given that, inter alia, he had worked in Mogadishu, has enhanced his skills whilst in the UK, would receive remittances from his sister and would benefit from the employment opportunities now prevalent in Mogadishu.
8. The second ground argues that the First-tier Tribunal failed to make adequate findings to justify its conclusion in respect of 276ADE and Article 8 ECHR.
9. Before me, Mr Bramble argued that the evidence, properly analysed, does not support the First-tier Tribunal's finding about the risk to the claimant of living in circumstances that fall below an acceptable level in humanitarian protection terms and that if *MOJ* had been correctly applied the Tribunal would have reached the opposite conclusion. He also argued that the First tier Tribunal failed to take into account a more recent Upper Tribunal decision (that was reported prior to the hearing) in which the situation and risks in Somalia were considered and that reinforced why the claimant would benefit from the improved economic climate in Mogadishu: *AAW (expert evidence - weight) Somalia* [2015] UKUT 673 (IAC)
10. Mr Bramble made a number of specific comments about the First-tier Tribunal's reasoning, which include the following:
 - (a) At paragraph [25] the First-tier Tribunal found that the claimant no longer had contact with relatives in Somalia, his aunts and sister having disappeared. No mention is made, however, of the claimant's uncle, with whom, by his own account, he lived before leaving Somalia and Mr Bramble argued that this undermined the finding.
 - (b) At paragraph [26] the First-tier Tribunal found that the claimant did not have qualifications that would enable him to find work but failed to take into consideration the study he had undertaken in the UK. Mr Bramble argued that no explanation is given as to why this education will not assist the claimant upon return. Nor, he argued, was consideration given to the improved opportunities in Mogadishu for returnees and advantages stemming from changes to employment law, as explained in *MOJ* and highlighted in *AAW*.
 - (c) At paragraphs [27] and [28] the First-tier Tribunal considered the support the claimant would receive from his sister and family and found that "it would be difficult for them to find a significant amount of money to remit" to the

claimant. Mr Bramble argued that the judge failed to consider the actual amount that could be remitted and how much the claimant would in fact need.

11. Mr Masood, on behalf of the claimant, argued that the Secretary of State has failed to identify an error of law: the Tribunal recognised and cited the relevant Country Guidance case and then proceeded to apply it, giving adequate reasons. He submitted that the First-tier Tribunal's findings at paragraph [25]-[30] were consistent with the evidence and properly reasoned.
12. Mr Masood also sought to distinguish *AAW*, on the basis that the factual matrix in that case was very different to the present one. The appellant in *AAW* was a 40 year old whose father had owned a six bedroom house and had the patronage of an influential member of a dominant clan. The judge in *AAW* characterised the appellant's circumstances as not being particularly difficult in Mogadishu. Mr Masood contrasted this to the present case where according to the factual findings of the First-tier Tribunal, which had not been challenged, the claimant and his family suffered very serious difficulties in Somalia including death, abduction and attempted forced recruitment to Al Shabab.

Consideration

13. The First-tier Tribunal identified that the relevant Country Guidance case in light of which to assess this appeal is *MOJ*. This is relatively recent Country Guidance case which addresses the risk faced by citizens of Somalia returning to Mogadishu. It is a comprehensive and detailed decision where a considerable amount of material has been assessed and I am satisfied that it was entirely appropriate for the First-tier Tribunal to assess the claimant's claim in light of the findings and conclusions therein. The First-tier Tribunal did not consider *AAW* but no error arises from its failure to do so. *AAW* is not a Country Guidance case. Nor, in any event, does its assessment of the situation in Mogadishu differ materially to that in *MOJ*.
14. *MOJ* makes clear that generally an ordinary civilian returning to Mogadishu will not face a risk of persecution at a level that requires protection under Article 3 ECHR or Article 15(c) of the Qualification Directive. Nor will an ordinary civilian face a real risk of forced recruitment to Al-Shabab.
15. However *MOJ* recognises that there may be some individuals who face the prospect on return to Mogadishu of living in circumstances falling below that which is acceptable in humanitarian protection terms. The head note to *MOJ* includes the following:
 - ix) *If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:*
 - *circumstances in Mogadishu before departure;*
 - *length of absence from Mogadishu;*

- *family or clan associations to call upon in Mogadishu;*
- *access to financial resources;*
- *prospects of securing a livelihood, whether that be employment or self employment;*
- *availability of remittances from abroad;*
- *means of support during the time spent in the United Kingdom;*
- *why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

(x) Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.

(xi) It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.

16. The First-tier Tribunal's assessment of the considerations identified in *MOJ* is at paragraphs [25] – [30].

- (a) At paragraph [25] the First-tier Tribunal found that the claimant is from a minority clan and consequently is not likely to be in a position to access significant support from his clan. That the claimant is a member of a minority clan was a finding that was clearly open to the Tribunal on the evidence before it and this has not been challenged by the Secretary of State. Having so found, the Tribunal was entitled to conclude, in line with *MOJ*, that the claimant's clan membership would not result in him being able to access meaningful and significant support upon return from his clan. At subparagraph (vii) of the headnote to *MOJ* it states that "*minority clans may have little to offer.*"
- (b) Also at paragraph [25] the First-tier Tribunal found that the claimant does not have contact with relatives in Somalia, his aunt and sisters having disappeared, and would not be in a position, upon return, to re-establish contact with immediate family members. Mr Bramble highlighted the absence of a reference to the claimant's uncle, with whom the claimant claimed to have lived before leaving Somalia. However, when the decision is read as a whole it is clear – and I am satisfied – that the First-tier Tribunal's finding was that the claimant has lost contact with all his relatives (the mention of aunt and sisters being examples of those with whom the claimant has lost touch). Having accepted the credibility of the claimant's and his sister's account, the Tribunal's finding about the claimant's lack of contact with family was open to it based on the evidence.
- (c) At paragraph [26] the First-tier Tribunal found that the claimant had only undertaken menial work in Somalia, would not have a trade to fall back on, and would not derive opportunities because of qualifications based in the UK. These findings are consistent with the evidence. The claimant is an eighteen year old whose only work experience in Somalia was washing cars. In these

circumstances, I am satisfied that, even though, as highlighted by Mr Bramble by way of reference to *MOJ* and *AAW*, there are improving economic opportunities in Mogadishu for returnees, it was open to the First-tier Tribunal to find that the claimant would not be well equipped to benefit from these.

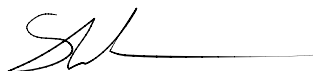
- (d) At paragraphs [27] and [28] the First tier Tribunal considered the financial support from family outside of Somalia, by way of remittances, that the claimant would receive and found these would likely not be forthcoming. The Tribunal reached this conclusion having heard oral evidence from the claimant's sister (which was found to be credible). Whilst a fuller explanation and less ambiguous language may have avoided Mr Bramble's challenge, taken in context, and considering the decision as a whole, it is clear that the Tribunal has reached a reasoned and justifiable finding as to the remittances the claimant will receive if returned to Somalia.
- (e) At paragraph [29] the First-Tier Tribunal noted that the claimant had been outside of Mogadishu during the formative years of 15 to 18 years of age and as such would have difficulty managing as an independent adult.

- 17. Having made the factual findings described above at 16(a)-(e), it was consistent with *MOJ* to conclude that the particular and specific circumstances of the claimant (which are clearly different to those of the appellant in *AAW*) are such that he could reasonably be said to fall into the narrow category of person returning to Mogadishu who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.
- 18. Accordingly, I am satisfied that the First-tier Tribunal has not made a material error of law. For the reasons I have explained, it has (a) made factual findings and drawn conclusions from those findings that were consistent with the evidence; and (b) properly applied *MOJ* to the specific and particular circumstances of the claimant.

DECISION

- (a) The appeal is dismissed.
- (b) The decision of the First-tier Tribunal does not contain a material error of law and shall stand.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 2 May 2016