



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/10325/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 15th December 2014**

**Determination
Promulgated
On 02nd January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR ABDIRAHMAN MOHAMED ALAALE
[ANONYMITY DIRECTION NOT MADE]**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mr P Toal of Counsel
Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a citizen of Somalia born on 1 June 1979 appealed against the decision of the respondent dated 2 March 2011 to refuse to grant him asylum and humanitarian protection in the United Kingdom. The appellant challenged the decision and First-tier Tribunal Judge Lucas dismissed the appellant's appeal on all grounds. Permission to appeal was granted by First-tier Tribunal Judge Sharp only on the ground relating to

Article 15 (c), the Judge saying that given that the Upper Tribunal decision is expected shortly which will address the issue that it may be advisable for the appeal to be delayed until that decision. Upper Tribunal Judge Kekic in a decision dated 21 March 2014 stated that the first-tier Tribunal made errors of law in respect of its findings and conclusions and article 15 (c) and that that part of the decision is set aside and shall be remade by the upper Tribunal at a resumed hearing.

2. At the resumed hearing the appellant was represented by Mr Toal who invited me to apply the current country guidance case to the appellant's appeal.
3. Mr Bramble set out the retained findings of Judge Lucas and Judge Chohan who on principles set out in **Devasaleen v SSHD [2002] UK IAT 00702** accepted the findings of Judge Lucas. He stated that Judge Lucas found that there was no evidence that the appellant was from a minority clan, as claimed. He also stated that the appellant has a wife and children living in a district of Mogadishu for support on his return. He also stated that the appellant's journey to the United Kingdom was sponsored by a distant cousin who lives in the United States. He asked that the appeal be dismissed.
4. Mr Toal in reply said I must apply the country guidance case to the facts.
5. The starting point in this appeal in accordance with the principles set out in **Devaseelan** must be the findings by Judge Lucas in his determination dated 21 June 2011. The principle findings at paragraph 42 to 47 are the following.
 - The appellant's claim is not credible or objectively justified. It is internally contradictory and inconsistent with itself. The appellant's inability to remember key dates and key events can only be explained by a manufactured claim for asylum.
 - It is not accepted that the appellant was ever abducted by a majority clan in Somalia. The evidence at his screening interview or the claim as advanced originally is inconsistent.
 - There is no mention by the appellant that he was detained even on one occasion by the Al Shabab which was his original claim. There is reference to his home having been confiscated and no mention of detention, still less multiple detentions as was later advanced by the appellant.
 - The reality is that there is no evidence to suggest that the appellant is from a minority clan in Somalia. The appellant's wife and children remain in Somalia and have not fled elsewhere. There is little objective evidence about the clan from which the appellant claims to emanate and the only basis for the assertion is the oral evidence of

the appellant himself. The appellant is not a credible witness and no weight is placed on his assertions with regard to his clan membership.

- In any event, it is accepted that the issue of clan membership is less significant than hitherto as a result of the emergence of the Al Shabab clan membership is therefore not determinative of asylum claims emanating from Somalia. Little weight is placed upon the appellant's assertions that he was detained by a majority clan on two occasions. The same lack of weight is placed on his assertion that he was released by the same majority clan following his detentions.
- It is no surprise that the focus of the appellant's claim appears to now have shifted to a generalised fear of Al Shabaab. This is because of the lack of evidence of his minority clan status.
- The appellant has no realistic credible fear of Al Shabaab in Somalia. He has simply come to the United Kingdom for reasons other than for a genuine or objectively justified fear of persecution for a Convention reason.

6. The appellant's appeal is dismissed on all grounds.

Consideration of the Country Guidance Case

7. I now consider the case of **Moj & Ors (return to Mogadishu) (Rev1) (CG) [2014] UKUT 442 (IAC)** as it applies to the facts of appellant's case. It was agreed at the hearing that the only issue in the appeal is whether the appellant is captured by the guidance in this case in respect of 15 (c).
8. It states in the headnote that 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) or 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 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 Shabab as an apostate or someone whose Islamic integrity has been compromised by living in a western country.
9. The country guidance case further states that there has been a 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 case given by the Tribunal in **MM**. It was stated that it is open to an ordinary citizen of Mogadishu to reduce his personal exposure to the risk of "collateral damage" in being caught up in an Al Shabaab attack of which

he is not a target by avoiding areas and establishments that are clearly identified as likely Al Shabaab targets and it is not unreasonable to expect him to do so.

10. The case further states that a person returning to Mogadishu after a period of absence would look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. It is also possible to seek assistance from 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.
11. The significance of clan membership in the 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 majority members.
12. It is accepted that a person facing return to Mogadishu after a period of absence and who 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 there may be employment or self-employment;
 - 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.
13. The case states that, put another way, it will be for the person facing return to explain why he would not be able to access 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.
14. The case states that it will therefore only be those with no clan or family support who are not in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood, will face the prospect of living in circumstances falling below that which is acceptable on humanitarian grounds.
15. The new evidence indicates clearly that it is simply not only those who originate from Mogadishu who may now generally return to live in the city without being subject to an Article 15 (c) risk of facing a real risk of destitution. On the other hand, relocating to Mogadishu for a person of a minority clan with no formal links to the city, no access to funds and other

forms of clan, family or social support, it is unlikely to be realistic 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, there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.

16. I have considered that the appellant's appeal against this criteria. The evidence is that the appellant has a wife and eight children living in Mogadishu. The appellant can return to his family and live with them in their accommodation. He will have the support of his family on his return. The appellant is not from a minority clan and therefore will get the support of his clan members on his return.
17. The appellant claims that his journey to the United Kingdom was paid by his relative who lives in the United States. This demonstrates that the appellant will be able to have access to resources on his return from this relative, if necessary.
18. The burden is upon the appellant to show that he will be destitute on his return to Mogadishu. No credible evidence has been provided by the appellant or in submissions at the hearing for why the appellant will not be able to find employment in Mogadishu and take advantage of the economic upturn in Somalia.
19. It has been found that the appellant came to this country as an economic refugee and therefore he can return to Mogadishu and continue his life with this family and make a living in Somalia.
20. I find that the appellant would not be at risk on his return to Mogadishu having considered his appeal according to the criteria set out in the country guidance case.

DECISION

I dismiss the appeal.

Signed by
Mrs S Chana
A Deputy Judge of the Upper Tribunal

Dated 28th of December 2014

