



IAC-FH-NL-V1

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

Appeal Number: DA/00166/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 June 2015  
Prepared 17 June 2015**

**Decision & Reasons Promulgated  
On 4 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**ABDULAZIZ HASSAN MOHAMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Trevelyan, of Counsel instructed by Messrs Lawrence  
Lupin Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Somalia born on 12 December 1962. He entered Britain in May 1990 and claimed asylum. His claim was refused but he was granted exceptional leave to remain until July 1993 and, after successive grants of exceptional leave, was granted indefinite leave to remain on 2 November 1999.
2. On 28 March 2007 he was convicted of the offence of threatening to kill and occasioning actual bodily harm. On 25 April 2007 he was sentenced

to an indeterminate sentence of imprisonment. He did not appeal against either conviction or sentence. He was released from prison on 6 March 2015.

3. Following his conviction an official of the UK Border Agency wrote to him stating that he would be subject to automatic deportation under Section 32(5) of the UK Borders Act 2007 unless he fell within one of the exceptions set out in Section 33 of that Act. In response his solicitors asserted that his rights under the Refugee Convention and under Articles 3 and 8 of the ECHR would be infringed by his deportation. Those representations were considered by the respondent who refused the representations and, on 14 January 2014 wrote to the appellant enclosing a decision notice setting out the reasons to make a deportation order on the basis that Section 32(5) of the UK Borders Act 2007.
4. Detailed reasons for the decision were given. These dealt with the appellant's immigration history, set out the sentencing remarks and conclusions of the sentencing judge who had sentenced the appellant to an indeterminate sentence with a requirement to serve a minimum fifteen months' imprisonment and dealt in detail with the appellant's asylum claim, noting that he belonged to the Hawiye tribe, sub-clan Habar Gidir Saad and that he claimed to be a member of the Sufi sect of Islam. It was noted that his brother had been killed in Somalia in April 2012 and it had been claimed by the appellant that his brother had been killed when he was in a Sufi mosque in the Hodan district of Mogadishu and that eight other people had been killed at that time. They noted that the appellant was separated from his wife and that he had three British children. It was not considered that either the appellant's tribe or his religion as a Sufi Muslim would mean that he would be in danger on return. It was not considered that he would be at risk of ill-treatment on return from Al-Shabaab whom he had stated would target him and the improvement in conditions in Mogadishu were highlighted.
5. It was not accepted that he would face treatment contrary to his rights under the ECHR.
6. It was considered that the appellant could not benefit from the provisions of Article 33(1) of the 1951 United Nations Convention on the Status of Refugees because he had been convicted by a final judgment of a particularly serious crime and, moreover, it was stated that Section 72 of the Nationality, Immigration and Asylum Act 2002 would apply for the purpose of the construction of that Article.
7. Reference is made to the provisions of paragraph 398 of the Immigration Rules and it was stated that neither paragraph 399 or 399A applied and furthermore that there were no exceptional circumstances which would outweigh the public interest in the deportation of the appellant.
8. The appellant appealed. His appeal was heard by a panel of the First-tier Tribunal and allowed, it appears, because they accepted that he would

face persecution on return to Somalia. That decision was appealed further to the Upper Tribunal and on 28 April 2015 I, sitting with the Honourable Mrs Justice McGowan, set aside the determination of the First-tier Tribunal having found material errors of law therein. That decision is annexed to this determination.

9. I directed that the appeal proceed to a hearing afresh in the Upper Tribunal. In these circumstances the appeal came before me on 16 June 2015.
10. At the hearing of the appeal the appellant, his mother and a brother gave evidence. The appellant relied on three witness statements. In his initial statement dated 8 July 2014 he had referred to the various victim awareness and other courses which he had undertaken in prison and said that he had been appointed to do the work of an Imam at HMP Kingston, leading Friday prayers. He had been given the trusted job as a "Redband Orderly". He stated that he suffered from asthma, diabetes and had a recurring TB problem and that he had reduced movement in his right arm. He emphasised that he had been involved, before being sent to prison, with the Edmonton Mosque where people have objected to his relationship with his wife and his lifestyle as he drank alcohol and had said that he was non-Islamic and that being a Sufi was the same as being an infidel. Some of those who had so accused him had returned to Somalia. He emphasised that Islamic extremists in Somalia were not Sufi and that they had demolished Sufi mosques and said that he would not be able to practice Sufism anywhere anymore.
11. In his statement dated 20 April 2015 he referred to his ties with his family and stating that he hoped to make contact with his children although he accepted that it was their choice if they wanted to have contact with him. He stated that violence in Somalia had escalated over the last three months. In a statement dated 8 June 2015 he asserted that Al-Shabaab were still present in Somalia and that he would not be protected there as he would not have money.
12. In his oral evidence the appellant said that he had three children here, Aideed Abdulaziz Hasan born on 16 November 1993, a daughter Hasan Abdi Asis Ladan who was born on 9 April 1995 and a son Abdul Basil Mohamed born on 15 November 2004. He had married his wife, whom he had known in Somalia, when she came to Britain in 1991. They had been divorced in 2008. He said that he was hoping to make contact with his children.
13. It was put to him that he was a member of a majority clan. He initially denied this although he stated that by birth he is a member of the Hawiye clan, but said that no one in the clan would assist him because he would not be recognised by them as he had no family or extended family members left in Somalia.

14. In cross-examination he stated that he hoped to enter a restorative justice scheme and make contact with his children – the victims of the crime – as it was a programme for compensating such victims. He could not obtain a contact order because of the ages of his children. He accepted that there was a prohibitive steps order still in force and said that he had lost contact with his children in 2006 when he had threatened to kill his wife when the incident which led to his being convicted of actual bodily harm had been committed.
15. He said that since release from prison he was supported by his family although he was trying to get paid work or voluntary work. His family would give him financial, psychological and emotional support as well as money and clothes and a place to sleep. He was living with one of his brothers at present.
16. He said that he had worked here as a taxi driver but had also worked in a hotel, in a warehouse and in factories and worked in the community.
17. It was put to him that on his child's birth certificate his occupation was given as that of a fisherman. It was then put to him by Mr Whitwell that his family would be able to provide some financial support if he were returned to Somalia. He said he did not know if that would be possible and he did not know how it was possible to get money through to Somalia. He confirmed that his family had had two properties in Mogadishu but said that these were occupied by people from his clan who had claimed the properties as their own. His younger brother who had been killed had not been living at the property. He said that if he returned people would think that he had a lot of money and he would be considered to be a spy.
18. He stated that his brother's wife was now in Kenya and his brother's children were in Sweden: they had been there for many years. His brother had been living with friends when he had been killed.
19. He repeated that he was a Sufi.
20. The appellant's brother Abdul Rahim Hasan Mohammed gave evidence. He is a British Telecom engineer. He said that he had left Somalia in 1999. He referred to his brother who had been killed as a teacher who had lived in the school – he had not lived at either of the two family properties. The family had sent money to his brother in Somalia using the money transfer agency "Dhabshill". The family would not be able to guarantee support for the appellant if he were returned but all they could really do would be to help him to flee again.
21. He said that the children of his brother in Somalia were still in Somalia but he did not know how they were supported.
22. In his witness statement he said that they were a Sufi Muslim family but that he had "by choice left that behind me since coming to the UK". He

asserted that the appellant had spoken out about extremism and Al-Shabaab at the Edmonton Islamic Centre.

23. The appellant's mother gave evidence stating that she was a Sufi Muslim like her son and referring to the death of her other son in Mogadishu. She referred to her own health issues.
24. In summing up Mr Whitwell relied on the Reasons for Refusal Letter and asked me to take into account the terms of the country guidance determination in **MOJ & Others (return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)**. He emphasised that in that determination it was stated that there had been a durable change in Mogadishu after the withdrawal of Al-Shabaab, the level of civilian casualties had reduced substantially, largely due to the cessation of confrontation of warfare within the city and asymmetrical warfare as Al-Shabaab attacking carefully selected targets. The conclusion in that determination was that the present level of casualties did not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk. He argued that the appellant's clan would provide potential social support mechanisms. Moreover, there was clear evidence of an "economic boom" in Mogadishu and there were increased opportunities for those with work experience, including that of a taxi driver, which the appellant had. The reality was that the appellant would not suffer by being placed into an IDP camp and money could be sent to him by his family. He stated that in terms of the appellant's private and family life it did not appear that he was exercising those rights. He was divorced from his wife and estranged from his children. Moreover there was no obstacle to his re-integration into Mogadishu. He asked me to dismiss the appeal.
25. In reply Mr Trevelyan relied on a detailed skeleton argument in which he made it clear that he no longer relied on the expert report of Dr Hoehne dated 19 July 2014. However he submitted that the deportation of the appellant would breach his rights under Articles 2, 3 and 8 of the ECHR and 15(c) of the Qualification Directive.
26. He argued that the appellant should not be excluded from protection under the Refugee Convention as Section 72 no longer applied given a decision of the parole board dated 28 November 2014 which had referred to the positive work which he has undertaken in detention and had concluded it was no longer necessary for the public protection that the appellant be confined. He stated the appellant had complied with the conditions of his immigration bail.
27. With regard to the appellant's asylum claim he referred to the specific threat which was from members of the Edmonton Mosque who had returned to Mogadishu and would be aware that he had spoken out against Al-Shabaab. The appellant would therefore be targeted by them. Moreover it was stated that he would be at particular risk as a Sufi Muslim – he referred to the circumstances in which the appellant's brother had been killed.

28. Turning to the determination in **MOJ & Others** he referred to the length of time which the appellant had been in Britain but in any event stated that the circumstances in Somalia had deteriorated since the determination in **MOJ** had been written. He said the appellant had lost his family home and had no connections with the country but in any event would be at risk because of his perceived wealth as a “Somali foreigner”. This was a distinct difference from the danger of the appellant being perceived either as westernised, apostate or as an Al-Shabaab supporter. He stated that the appellant had no family to whom he could turn in Somalia.
29. He also argued that the appellant’s Article 8 rights would be infringed by his removal particularly given the potential of his being able to rebuild his relationship with his children.
30. In his oral submissions he again emphasised the importance of the parole board decision and the appellant’s religion as a Sufi. There was no way in which he would be able to rely on support from his family in Britain and the appellant had given clear reasons why he would not be assisted by his clan.
31. He therefore asked me to allow the appeal.

### **Discussion**

32. I first considered whether or not the appellant should be excluded from the benefits of the Refugee Convention under the provisions of Section 72 of the Nationality, Immigration and Asylum Act 2002.
33. I note that the appellant was sentenced to an indeterminate sentence of imprisonment for public protection and the terms of the sentencing judge comments that the imprisonment for an indeterminate period was for the protection of the public. Moreover the judge referred to the appellant’s “history of creating problems of one sort or another”, his drunkenness and the appellant’s anger which had led to him threatening his wife and the comment he made that “no one leaves this home alive”.
34. He referred to the fact that the appellant had had a history of violence in 1998 when he had held the children over a balcony and the fact that the appellant had pushed his wife’s head through safety glass.
35. The judge had referred to the injunction taken out by the appellant’s wife and the fact that the appellant had broken the terms of that.
36. I have considered the parole board decision dated 28 November 2014 which stated that the appellant did not pose an unacceptable risk of absconding.
37. The risk factors had been noted by the parole board as being a “violent lifestyle; alcohol abuse; an unstable relationship; irresponsibility and callous emotional traits”. His history of perpetrating domestic violence

which had been underpinned by his “attitude supportive of sexist roles and abuse of women...”.

38. The report did, however, set out some evidence of changes in his attitude by the appellant and the various programmes which the appellant had undertaken while in prison. They refer to positive reports from the staff. The report stated that the appellant’s offender manager had placed him in a low risk category for further general and violent re-offending but assessed his risk of serious harm to a known adult – the appellant’s wife – as being high on the basis that he was yet to be tested in the community but his risk to the public, including any new partner and the children was now reduced to medium. It is of note that the panel advised additional licence conditions for the management of his risk and stated that he should not attempt to contact or communicate with his wife or children without the prior approval of his supervising officer and the social services department. Moreover, he is still not to enter the London Borough of Enfield without the prior approval of his supervising officer.
39. While I have taken into account the terms of the parole board report I still conclude that as the appellant has committed a particularly serious crime and that there is still a danger to the community which, notwithstanding the positive remarks of the parole board is still evident from their report, the appellant should not be entitled to the protection of the Refugee Convention: Section 72(2) of the Nationality, Immigration and Asylum Act 2002 applies.
40. I would add that, in any event, I have come to the conclusion below that the appellant does not have a well-founded fear of persecution for a Convention reason on return to Mogadishu and therefore the Section 72 exercise is academic.
41. I have considered the terms of Section 117B and Section 117C of the Nationality, Immigration and Asylum Act 2002. I refer to Section 117B merely because that was raised by Mr Trevelyan. He appeared to imply that because the appellant was not a burden on the state here and that he spoke English meant that he was entitled to leave under the provisions of Section 117B. That, of course, is incorrect as the reality is that the factors in Section 117B are a minimum requirement for it to be found that the removal of an applicant would be disproportionate. The fact that they do exist does not prevent removal.
42. The relevant provisions are those in Section 117C and in particular the two exceptions. The appellant cannot benefit from exception 2 as he does not have a genuine subsisting relationship with a qualifying partner or with a qualifying child. Moreover, again for the reasons to which I have referred below I do not consider that there are very significant obstacles to his integration into Somalia nor, indeed, that he is socially and culturally integrated into this country.

43. Again turning to the provisions of paragraphs 398 and 399A of the Rules I do not consider that these paragraphs assist the appellant in that he has been sentenced to a period of imprisonment of at least four years and none of the qualifications in paragraphs 399 or 399A apply. The reality is that I cannot consider that the appellant is exercising family life here albeit that he has relationships with his brothers and mother and I find that he cannot be said to be exercising private life here to any extent other than his relationships with his family. There is no employment record before me although I will accept that the appellant has had a number of jobs here over the years.
44. I now turn to the issue of whether or not the appellant would face ill-treatment contrary to his rights under Article 3 of the ECHR if returned to Somalia. These issues are effectively the same as those which would be considered should I not have found that he was excluded from the benefits of the Refugee Convention.
45. The central issue is that of the appellant's particular circumstances on return. It is of note that he is a member of the Hawiye – the majority clan. It is clear from the determination in **MOJ & Others** that he would benefit from that connection. I do not accept that in a clan-based society such as that in Somalia the appellant would not be able to access the protection of the majority clan merely because he has been out of the country for some time. His clan membership is effectively immutable. Moreover, the appellant has clearly not lost cultural ties with Somalia. It is of note that his mother does not speak English and clearly the appellant, whose English while giving evidence was clearly not particularly proficient, will speak Somali to her. Moreover he has continued to have ties with Mogadishu over the years and had a brother who was living there until he was killed in 2012 and it appears that it may well be the case that his brother's children are still in Mogadishu – that was the evidence of the appellant's brother although the appellant himself stated that they were in Sweden.
46. He would be able to receive some funds from Britain – his brother referred to the ability to remit funds through “Dhabshill” and given that his family are giving him some support here, they would be able to support him in Mogadishu.
47. In any event it is clear, again from the determination in **MOJ** that there is something of an economic boom in Mogadishu and that trades such as those of working in hotels, restaurants and even as a taxi driver would possibly be available to the appellant let alone, of course, the fact that he worked as a fisherman in Mogadishu before leaving Somalia: I note, of course, that he left Somalia at the age of 28 and therefore would have worked for some considerable time there before leaving.
48. It is again evident from the determination in Mogadishu that Al-Shabaab are no longer in control of Mogadishu. While I accept, as is evident from the documentary evidence placed before me shortly before the hearing by



the appellant's solicitors that there are still violent incidents in Mogadishu, I note that many of the articles which were enclosed within the latest bundle related to the same incident. I note moreover that those returning can minimise the likelihood of injury by taking appropriate avoiding action and the overall conclusion of the Tribunal that it cannot be said that living in Mogadishu for those who return would lead to an Article 15(c) risk. I would again point out that there is no indication that the appellant would be forced into an IDP camp. The family clearly has property in Mogadishu and although it is claimed that that has been taken by others there appears no reason why the appellant might not be able to attempt to reclaim it but in any event there is nothing to indicate that he would not be able to find accommodation for himself.

49. The appellant states that because of his brother being killed it indicates that he himself would be at danger principally because he was a Sufi Muslim. However the reality is that the appellant's brother was killed while at a Sufi mosque, with others. It was a direct attack by Al-Shabaab who are no longer in control in Mogadishu and the attack was not specifically directed at the appellant's brother. I do not consider the appellant's brother's fate is one which it would be reasonably likely to befall to the appellant.
50. With regard to the appellant's Sufi Muslim faith the evidence, as set out in the deportation decision makes it clear that a very large proportion of the Muslim population of Mogadishu are of a Sufi tradition and there is no evidence whatsoever to indicate that Sufi Muslims, *per se*, would be singled out by any group in Mogadishu now let alone that the appellant would be so singled out. It is of note that the letter from Canon Richard Hind at HMP Kingston which referred to the appellant's support for Muslim newcomers in the jail did not refer to the appellant's Sufi faith. While I therefore accept that the appellant is a member of the Sufi tradition I do not consider that that is a matter which would single him out for ill-treatment.
51. It was the appellant's assertion that he had spoken against Al-Shabaab while in prison. The reality must be, however, that the vast majority of those resident in Mogadishu are not supporters of Al-Shabaab. I therefore do not consider that the appellant would therefore face any particular ill-treatment because he had, while in Britain, stated that he did not support Al-Shabaab. In any event the chances of the appellant, while in Mogadishu, coming across any Somalis who had returned to support Al-Shabaab is clearly remote.
52. I therefore do not consider that the appellant is at real risk of either persecution for a Refugee Convention reason or for treatment contrary to his rights under Article 3 of the ECHR on return.

### **Notice of Decision**

52. I therefore having set aside the decision of the First-tier Judge re-make this decision and dismiss this appeal.

Signed

Date

Upper Tribunal Judge McGeachy

## **Annex**

### **DECISION AND DIRECTIONS**

1. The Secretary of State appeals, with permission, against a decision of the First-tier Tribunal (First-tier Tribunal Judge Andrew and Mr G F Sandall (non-legal member)), who in a determination promulgated on 16 September 2014 allowed the appeal of Mr Abdulaziz Hassan Mohamed against a decision of the Secretary of State made on 13 January 2014 to deport the appellant to Somalia and further concluding that Section 32(5) of the UK Borders Act 2007 applied.
2. Although the Secretary of State is the appellant before us we will, for ease of reference, refer to her as the respondent as she was the respondent in the First-tier. Similarly we will refer to Mr Abdulaziz Hassan Mohamed as the appellant as he was the appellant in the First-tier Tribunal.
3. The appellant is a citizen of Somalia born on 12 December 1962. He arrived in Britain in May 1990. He claimed asylum. That claim was refused but he was granted exceptional leave to remain until July 1993 and, after successive grants of exceptional leave, was granted indefinite leave to remain on 2 November 1999.
4. On 28 March 2007 he was convicted of the offence of threatening to kill and occasioning actual bodily harm. On 25 April 2007 he was sentenced to an indeterminate sentence of imprisonment. He did not appeal against either conviction or sentence. The appellant was released from prison on 6 March 2015.
5. Following the appellant's conviction an official of the UK Border Agency wrote to him stating that he would be the subject to automatic deportation under Section 32(5) of the UK Borders Act 2007 unless he fell within one of the exceptions set out in Section 33 of that Act. He was asked for any reasons he might have for stating that those exceptions might apply.
6. The appellant's solicitors responded, in effect claiming that his rights under the Refugee Convention and Articles 3 and 8 of the ECHR would be infringed by his deportation. The appellant was thereafter interviewed and in August 2013 the Secretary of State wrote to him stating that it was not accepted that he could qualify for asylum as the provisions of Section 72 of the Nationality, Immigration and Asylum Act 2002 applied. The decision to make a deportation order was then made and on 13 January 2014 the Deportation Order was signed. Detailed reasons for the decision that he could not qualify under the provisions of Articles 3 and 8 of the ECHR were served in a decision letter dated 15 January 2014.
7. That letter is 24 pages long. Having set out the appellant's crime and the sentence, it was noted that he was a member of the Hawiye tribe and it was stated that this was recognised as a majority clan. It was accepted

that he was a Muslim claimed to be a Sufi. It was stated that it was not accepted that he would be at risk on return to Somalia and it was emphasised that the situation in Mogadishu had changed significantly in the past few years.

8. With regard to the appellant's claim that he was a Sufi it was noted that a large majority of citizens were Sunni Muslims of a Sufi tradition but it was stated that he had failed to demonstrate that he had been an active member of the Sufi community in Britain beyond attending Friday prayers even though he had been free here to be as active in and engaged with the community as he wished. It was not considered that being a Sufi was of particular importance to his religious identity or practice or that it would stop him from manifesting his faith openly in Somalia. The letter stated:-

“As such whilst it is accepted that you may have been born Sufi Muslim, it is not accepted that you continue to actively practise this religion. Therefore, it is not considered that you are at risk on return to Somalia because of your faith.”

9. It was not accepted that the appellant would be of any interest on return. The terms of the country guidance case of **AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC)** were considered in pages 5 through to 14 of the letter, particularly with regard to the appellant's claim to fear Al-Shabaab. A large number of newspaper articles and other documentary evidence was considered and it was concluded that the situation in Mogadishu had dramatically changed since the determination in **AMM** had been promulgated. It was considered that the appellant would have a sufficiency of protection within Somalia.

10. The final conclusion was that:-

“In conclusion, whilst it is accepted that you are a national of Somalia, you have failed to demonstrate a reasonable degree of likelihood that you would be at risk as consequence of being from a Sufi Muslim (sic) and from the Al-Shabaab on account of your race and/or religion if returned to Somalia.”

11. The appellant's appeal against that decision was heard on 19 August 2014. The determination is short. The Tribunal noted the appellant's fear of persecution from Al-Shabaab stating that that was because of his faith as a Sufi Muslim and because of the length of time he had spent in the United Kingdom and that he had claimed that he had no familial protection in Somalia. They noted that he had claimed that he was entitled to humanitarian protection and that that claim was based on the same fears.
12. In paragraph 8 they noted that the appellant had produced a bundle of documents including an expert report from Dr Marcus Hoehne and in paragraph 13 they stated that they had given careful consideration to all

the evidence before them. They accepted that the appellant was a practising Sufi Muslim and stated that he had become westernised and that he no longer had family in Somalia.

13. Having noted the appellant's offences they found that Section 72 applied and that therefore the appellant could not succeed in his asylum claim. However, they then said that they found that the appellant's claim engaged Article 3.
14. Their reasons for so finding were merely that:-

“Having considered the expert's report we are satisfied that there are continuing problems with Al-Shabaab in Mogadishu and indeed in central and southern Somalia.”

They did comment, however, that many of the references in the report were not to sources which could be described as having a great deal of reliability but they noted that the expert had referred to reports from the UN General Secretary, who had stated that he was concerned about the current security situation in Somalia and that the political progress made over the past year (2013) and the military gains against Al-Shabaab that had been achieved were at serious risk of being reversed. They stated that they had seen reports produced by the respondent which suggest that Somalia was safe for Sufi Muslims and “Sufism may well make a comeback” and stated that that did not suggest that it had already done so or that Sufism could be practised freely and openly in Somalia.

15. They stated that they bore in mind that the appellant was a member of a majority clan but that he had no family left in Somalia to support him and said that he would be unfamiliar with Mogadishu having been out of that city for some time.
16. In paragraph 32 they said that:-

“We also have to take account of the fact that the appellant has been out of Somalia for 24 years and that he has adopted, to a large extent, a westernised lifestyle. Even if this does not, alone, amount of Article 3 we have noted what is said in the case of **AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC)**. The first paragraph of the headnote Country Guidance, Mogadishu states

‘Despite the withdrawal in early August 2011 of Al-Shabaab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a

reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply.'

We are satisfied that the appellant is not a middle class professional person who is able to live to a reasonable standard."

17. They then said that they were satisfied that the appellant would be at risk if he were returned to Somalia and that they allowed the appeal.
18. It is not entirely clear from the determination whether or not they allowed the appeal against the refusal of humanitarian protection as well as that relating to the rights of the appellant under Article 3.
19. The Secretary of State appealed referring to the decision in **K.A.B. v. SWEDEN** that Al-Shabaab was no longer in power in the city, that there was no frontline fighting or shelling any longer and the number of civilian casualties had gone down. It was claimed that the court had not established whether the appellant's personal situation was such that a return to Somalia would contravene the relevant provisions of the Convention. The grounds refer to the fact that the appellant had spent many years in Somalia before coming to Britain and that he was a member of a majority clan. The application on those grounds was refused in the First-tier. When the application was renewed in the Upper Tribunal it was stated that the Tribunal had not engaged with reasons given in the reasons for deportation letter about change in circumstances in Somalia since the promulgation of the determination in **AMM** and that that was an error of law.
20. Upper Tribunal Judge Kopieczek granted permission referring to the determination in **MOJ & Ors (Return to Mogadishu) Somalia (CG) [2014] UKUT 00442 (IAC)**, (which, of course, had not been promulgated until after the determination of the First-tier Tribunal in this case had been promulgated) but he stated that it might well reflect material that the respondent had relied on in this appeal. He also referred to the concerns that the Tribunal had not properly taken into account the fact that the appellant was a member of a majority clan nor had they properly considered the appellant's faith as a Sufi Muslim.
21. At the hearing of the appeal before us Mr Clarke argued that the Tribunal had simply not engaged the matters set out in the refusal nor indeed with further evidence which had been submitted at the hearing relating to the resurgence of Sufi Muslims in Somalia. In particular he referred to evidence that the fighting in Mogadishu had ended and stated that it was clear that the evidence put forward by the Secretary of State in the letter of refusal had been considered by the Upper Tribunal in the country guidance of **MOJ** and that it had been concluded that there been a fundamental change in Mogadishu.

22. In reply Mr Trevelyan argued that following the decision in **VHR (unmeritorious grounds) Jamaica [2014] UKUT 00442 (IAC)** it was not necessary for the Tribunal to go into all the detail on which they had based their reasons for allowing the appeal. In his skeleton argument he quoted from that determination, which stated:

“It is not necessary for judges to record, analyse, rehearse and repeat the entire interstices of the evidence. The task of the First-tier Tribunal is to make reasoned findings on the key issues in the case and a clear decision.”

23. He stated that the Tribunal had based their conclusions on the appellant’s lifestyle and not simply on the fact that he was a Sufi and that that alone was a reason why he should not be expected to return.
24. He referred to the headnote in **AMM** and stated that that indicated that even members of majority clans would be at risk of ill-treatment sufficient to entitle them to humanitarian protection pointing to the fact that the Tribunal were correct to say that the appellant did not come from a professional or a middle class background. He argued moreover that there was nothing to indicate that the Tribunal were wrong to rely on the conclusions in **AMM**, particularly given the report from Dr Hoehne, and the evidence in his report which indicated that the situation, although it had at one stage improved, had deteriorated by 2014. In his detailed skeleton argument he referred to the various sections of the report and other evidence which indicated that the situation in Mogadishu had not substantially improved. While he accepted that the Tribunal had not engaged with the respondent’s evidence he argued that it was entitled to prefer the evidence placed before them on behalf of the appellant and it was quite clear that they had considered the evidence and placed weight on what they preferred.

## **Discussion**

25. It is unclear what the decision of the Tribunal actually was. The only matter on which they state that they allowed the appeal appeared to be on the basis that the appellant’s rights under Article 3 of the ECHR would be infringed by his removal. They did refer to the headnote in the determination in **AMM** insofar as it gave country guidance on a real risk of Article 15(c) harm but they do not, in terms, state that they found that the appellant qualified for humanitarian protection.
26. Leaving that issue to one side, however, the reality is that the Tribunal did not give the “reasoned findings” on the key issues in the case and did not give the clear decision to which reference is made in the decision in **VHR**.
27. They simply did not engage with the evidence put forward by the respondent in the letter of refusal and indeed did not engage with the evidence put forward on behalf of the appellant. They made no attempt to

weigh up all the evidence before them and say what they accepted, what they did not and why they would prefer certain evidence to other evidence.

28. Moreover, they appear to rely on the headnote in **AMM** but do not appear to have engaged with the statement at paragraph 2 of the section relating to Mogadishu which said that:-

“The armed conflict in Mogadishu does not, however, pose a real risk of Article 3 harm in respect of any person in that city, regardless of circumstances.”

They simply did not weigh up the appellant’s circumstances and did not appear to take into account the fact that he was from a majority clan. Moreover, their findings regarding the claim by the appellant that he was a Sufi Muslim are not in any way considered. There is no clear engagement by them with the assertions of the letter of refusal that the large majority of Somali citizens were Sunni Muslims of a Sufi tradition and that there was nothing in the appellant’s faith that would mean that he would stand out for ill-treatment. However, the principal error of law of the Tribunal is that they did not engage with the up-to-date evidence put forward by the Secretary of State to show that circumstances had changed since the promulgation of the determination in **AMM** three years before despite the fact that it is clear from that determination that when the country guidance was given in 2011 it was not considered by the Tribunal that, given the fluid situation in Somalia, that country guidance would endure for any length of time.

29. For these reasons we have set aside the determination of the First-tier Tribunal and direct that the appeal proceed to a hearing afresh.

### **Directions**

1. The decision of the First-tier Tribunal is set aside and the appeal will proceed to a hearing afresh in the Upper Tribunal.
2. 21 days before the date of hearing both the appellant’s representative and the representative of the respondent will lodge indexed and paginated bundles of all documents on which they wish to rely at the hearing together with skeleton arguments cross-referenced to the evidence in their respective bundles.