



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

Appeal Number: PA/01403/2020 (V)

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice
Centre
Remotely by Microsoft Teams
On 5 August 2021**

**Decision & Reasons Promulgated
On 25 August 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**AHA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A de Ruano, Goodfellows Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Somalia who was born on 4 August 1977.

3. The appellant arrived in the United Kingdom on 8 November 2009. On 18 November 2009, he claimed asylum. That application was refused on 17 December 2009. The appellant's appeal to the First-tier Tribunal (Judge Walters) was dismissed on 8 February 2010. Thereafter, he was refused permission to appeal by both the First-tier Tribunal and Upper Tribunal and he became appeal rights exhausted on 24 September 2010.
4. The appellant made further submissions to the Home Office on 5 July 2012 which were refused on 1 October 2012. He again made further submissions on 15 October 2014 and those were refused on 16 April 2015. Neither decision gave rise to a right of appeal.
5. Then, on 22 March 2017 the appellant made further submissions. He claimed to be a member of the minority, Tuni clan from Mogadishu and to be at risk on return from majority clan militia and also from Al-Shabab. He claimed asylum, humanitarian protection and that his removal would breach Art 8 of the ECHR.
6. On 31 December 2019, the Secretary of State refused each of the appellant's claims. The Secretary of State did not accept that the appellant was a citizen of Somalia or that he was a member of the Tuni, minority clan. The Secretary of State rejected the appellant's claim, therefore, to be at risk of persecution on return and also to be entitled to humanitarian protection under Art 15(c) of the Qualification Directive (Council Directive 2004/83/EC). Further, the Secretary of State concluded that the appellant could not succeed based upon his private and family life in the United Kingdom under para 276ADE(1) of Appendix FM of the Immigration Rules (HC 395 as amended) or under Art 8 outside the Rules.

The Appeal to the First-tier Tribunal

7. The appellant again appealed to the First-tier Tribunal. In a decision sent on 30 November 2020, Judge M R Hoffman dismissed the appellant's appeal on all grounds.
8. Unlike the Secretary of State, the judge accepted that the appellant was a citizen of Somalia. However, he did not accept that the appellant was a member of the Tuni, minority clan or that he would be at risk on return to Mogadishu either under the Refugee Convention or under Art 15(c) of the Qualification Directive. The judge also found that the appellant had not established that there were "very significant obstacles" to his integration on return under para 276ADE(1)(vi) of the Rules or that his removal would breach Art 8 outside the Rules.

The Appeal to the Upper Tribunal

9. The appellant sought permission to appeal to the Upper Tribunal. On 7 January 2021, The FtT (Judge Adio) granted the appellant permission to appeal.

10. The appeal was listed for a remote hearing at the Cardiff Civil Justice Centre on 5 August 2021. I was based in court whilst Mr de Ruano, who represented the appellant, and Mr Avery, who represented the Secretary of State, joined the hearing remotely by Microsoft Teams.

The Appellant's Challenge

11. On behalf of the appellant, Mr de Ruano relied upon the grounds of appeal which he developed briefly in his oral submissions. Although unenumerated, I will conveniently refer to these as Grounds 1-5.
12. First, Mr de Ruano submitted that the judge had wrongly failed to give proper regard to the fact that the appellant had been established by DNA evidence to be the brother of two sisters who (together with their mother) had been granted refugee status in the UK. That, he submitted, was strongly indicative that the appellant was, as his sisters had claimed, a member of the Tuni, minority clan. He submitted that the judge had applied an "unduly high burden of proof" in not accepting that evidence. (Ground 1)
13. Secondly, Mr de Ruano submitted that the judge had failed to give proper regard to the expert report of Mr Omer Ahmed who had stated that the appellant was "to a high degree of probability likely to be a member of the Tunni clan" on the basis that the expert's report lacked detail about the questions he had asked the appellant. He relied upon the expert's expertise and qualifications. (Ground 2)
14. Those were the grounds upon which Mr de Ruano made oral submissions. There are an additional three points raised in paras 7-9 of the grounds, which Mr de Ruano was content to rely upon in their written form.
15. Thirdly, the grounds contend that the judge, whilst recognising that there were problems with the previous judge's (Judge Walters) reliance upon the Sprakab Linguistic Report, had not taken into account those shortcomings. (Ground 3)
16. Fourthly, the judge's finding that appellant's relatives in Mogadishu would be able to provide support for him, was speculative and not founded on any solid evidence. (Ground 4)
17. Finally, in respect of Art 8 of the ECHR, the grounds contend that the judge was wrong not to accept that "family life" had been established between the appellant and his close family in the UK as these were his only family members and they had all fled Somalia to come to the UK. (Ground 5)

The Respondent's Submissions

18. On behalf of the Secretary of State, Mr Avery submitted that the judge had not erred in law in dismissing the appeal.

19. First, he submitted that the judge had, at paras 28 and 29, addressed the issue concerning the respondent's recognition of the appellant's sisters as being refugees. However, Mr Avery submitted that the judge was right to note that it was not known upon what basis they were granted refugee status. Mr Avery acknowledged that there was no record held by the Home Office on that issue. It was, he submitted, likely to be a combination of factors and they were both lone females with no family to return to in Mogadishu. It could not be assumed that the Secretary of State had accepted that they were members of the Tuni, minority clan.
20. Secondly, as regards the expert's report, Mr Avery submitted that the judge had dealt with this at paras 29-32 of his decision. The judge had explained why he did not give weight to the expert's conclusion. Mr Avery also pointed out that the expert had relied on the fact the appellant's sisters had been granted refugee status and that the DNA evidence showed they were related as he claimed.
21. Thirdly, Mr Avery submitted that the issue of the appellant's clan membership was not a key factor. The judge had applied MOJ & Ors Somalia CG [2014] UKUT 00442 (IAC) and had accepted that the appellant could reasonably and safely return to Mogadishu where he would not be at risk including risk from Al-Shabab.
22. Fourthly, Mr Avery submitted that it had been open to the judge reasonably to find that 'family life' was not established between the appellant and his adult siblings and mother in the UK.

Discussion

23. I will deal with each of the grounds in turn.

Ground 1

24. Judge Hoffman dealt with the argument concerning the respondent's recognition that the appellant's sisters and mother were refugees and, therefore, that supported the appellant's claim to be a member of the Tuni, minority clan at paras 28 and 30.
25. At para 28, the judge said this:

“Despite the findings of Judge Walters, the appellant submits that I should nevertheless find that he is from the Tuni clan. He first seeks to rely on the fact that he has provided DNA evidence that demonstrates that he is related as claimed to his three sisters and mother. He submits that his sisters and mother were granted refugee status by the respondent on the basis that they were from a minority clan. While I acknowledge that the appellant's sisters and mother also claim to be Tuni, I find that their evidence alone is not sufficient to discharge the burden given that they will have an interest in helping their brother remain in the UK. Moreover, there is no evidence before me to demonstrate on what basis the appellant's sisters and mother claimed asylum. In cross-examination, all three sisters confirmed that the

respondent granted them refugee status rather than them having to appeal to the Tribunal. Mr de Ruano submitted that it is almost certainly the case that the appellant's sisters and mother would have been granted refugee status on the basis that they were from a minority clan. Ms Mepsted, however, argued that they could in fact have been granted refugee status on the basis that they were lone females, and that Home Office policy in respect of Somali refugees was likely very different 20 years ago".

26. Then, having considered the expert report of Mr Ahmed at paras 29 and 30, the judge added this at para 30:

"However, I accept Ms Mepsted's submission that there is no evidence before the Tribunal to demonstrate what basis the appellant[s] sisters were granted refugee status, and I accept that it is arguable that it may have been the basis that they were lone females rather than that they were from a minority clan. I do not therefore find that the fact that the appellant[s] sisters and mother were granted refugee status is determinative of the appellant's clan status".

27. The judge's reasoning is legally unassailable. The basis upon which the appellant's sisters and mother had been granted refugee status is simply unknown and, it would seem from Mr Avery's position, no record is held by the Home Office as to the basis of the grant of refugee status to the appellant's family members. Mr de Ruano did not seek to contradict Mr Avery's position as to Home Office records and, it is common knowledge that, in granting refugee status, the Secretary of State does not give reasons for doing so. In my judgment, the judge properly considered this issue and was reasonably and rationally entitled to conclude that, despite the familial relationship being accepted now on the basis of DNA evidence, there was no evidence as to the basis upon which the appellant's sisters and mother had been granted refugee status. There was no evidence that it was on the basis that the Secretary of State accepted that they came from the Tuni, minority clan. To have reached a finding in the appellant's favour on this issue, the judge would have had improperly to speculate as to the basis of the grant of refugee status without any evidence to support a positive conclusion in the appellant's favour.
28. For these reasons, I reject ground 1. Whether or not the appellant could establish that he was from the Tuni, minority clan fell to be decided, taking Judge Walters' determination as a 'starting point', based upon the evidence before the judge, in particular the appellant relied on the expert report of Mr Ahmed. The judge's treatment of that report forms the basis of ground 2.

Ground 2

29. In relation to Mr Ahmed's report, Mr de Ruano relying on para 5 of the grounds and criticised the judge's reasoning for giving the expert report "little weight" as there was a lack of detail about questions asked by the expert of the appellant in order to found his conclusion that it was "to a

high degree of probability” likely that the appellant was a member of the Tuni clan.

30. Mr Ahmed’s report dealt with two issues: first, the appellant’s knowledge; and secondly, a linguistic assessment. At paras 29–31, the judge said this:

“29. The appellant also seeks to rely on an expert report provided by a Mr Omer Ahmed [AB/25–70]. According to his CV, Mr Ahmed is a British citizen and a Somali-speaking lawyer (qualified in England and Wales). He says that he is *‘registered with the UK Stabilisation Unit as a deployed civilian expert, with experience of delivering legal services in fragile conflict/post-conflict jurisdictions, and strong knowledge and expertise in Justice and Security sector reform, Governance Rule of Law [sic]’*. His CV sets out an impressive list of organisations that he claims to have worked alongside, including the Foreign & Commonwealth Office as a legal adviser for Somalia and Somaliland between January 2013 and July 2014.

30. In his report, Mr Ahmed, states that *‘[b]ased on my expert knowledge of Somali clan structure and supported both by the telephone interview with the appellant, and review of the documents on [sic] in this matter, I conclude that the appellant is to a high degree of probability likely to be a member of the Tunni clan’* [AB/42–43]. However, I find that I can attach little weight to Mr Ahmed’s conclusion. First, while I accept that he has a degree from LSE on Law and Social Anthropology, Mr Ahmed’s field of expertise appears to be that of a lawyer rather than an expert on Somali clan structures. Secondly, while Mr Ahmed refers to a telephone interview with the appellant and documents that he has reviewed, it is unclear from the report what questions Mr Ahmed actually asked the appellant in order to satisfy himself that the appellant is indeed from the Tuni clan. Instead, Mr Ahmed simply refers to the fact that the appellant has provided DNA test results to show that he is related to his sisters. However, I accept Ms Mepsted’s submission that there is no evidence before the Tribunal to demonstrate what basis the appellant (*sic*) sisters were granted refugee status, and I accept that it is arguable it may have been the basis that they were lone females rather than that they were from a minority clan. I do not therefore find that the fact that the appellant (*sic*) sisters and mother were granted refugee status is determinative of the appellant’s clan status.

31. Mr Ahmed then goes on to consider the dialect that the appellant speaks and whether it is one used by the Tuni. Mr Ahmed acknowledges that he is not a linguistic expert, although he says that he is *‘an expert speaker of Somali with extensive country of origin expertise’* [AB/45]. However, as a lawyer of England and Wales, Mr Ahmed should be well aware that he is not a linguistics expert, he should not be purporting to give expert evidence on linguistics. Whatever his personal experience of the Somali language, it is not in my view adequate for him to put himself forward as an expert witness on this point. In any event, while Mr Ahmed claims to have *‘undertake[n] a detailed assessment of the appellant’s Somali language, dialect and accent’*, his report is

again silent as to what the criteria and questions he used to assess this. While Mr Ahmed says that the appellant was *'able to identify key neighbourhoods, and features within the different areas of Mogadishu'*, Mr Ahmed fails to provide examples of any of these nor does he consider whether the appellant could have learnt this information from open sources since his previous asylum appeal was dismissed. Mr Ahmed says that the appellant *'had knowledge of the clan dynamics in Mogadisho (sic), but limited knowledge of clan lineage'*, which he found to be *'unsurprising'* given the appellant's age and background and his lengthy absence from Somalia. I would reiterate that there is no evidence that Mr Ahmed is an expert on Somali clans and, furthermore, he does not refer to any academic or other sources to support his opinion that Somalis of the appellant's age are less likely to have knowledge of clan lineages. As the respondent argues, it might also be said that the appellant displays limited knowledge about the Tuni clan's lineage because he is not himself Tuni. And whilst Mr Ahmed says that the appellant speaks with a Mogadishu accent, in my view that is not determinative of this clan given the large number of clans that live in that city".

31. At para 32, the judge dealt with Mr Ahmed's comments in relation to Judge Walters' reliance on the Sprakab Report which I will return to shortly.
32. Mr de Ruano submitted that Mr Ahmed had satisfactorily explained his expertise and qualifications and the judge should, therefore, have given his opinions greater weight.
33. Of course, as is well-known, unlike in criminal and civil jurisdictions, whether an individual is an expert (and therefore entitled to express opinions) is not a condition to the admissibility of that evidence but, of course, expertise adds weight to an opinion (see Kapela [1998] Imm AR 294 at p.301). Expertise may be derived from, either in isolation or combination, qualifications and experience. To be considered an expert, even if only relevant to weight, requires the Tribunal to be satisfied as to the individual's qualifications and/or experience so as to justify treatment of the evidence as being that of an expert. Consequently, for example, linguistic experts – employed by Sprakab – may well be able to establish expertise in linguistic matters but as regards country and cultural knowledge, without more, any expertise does not flow from the fact that they are linguistic experts and the latter evidence must, as a result, be seen in that light if their expertise in relation to culture, country and origins is not also established (see SSHD v MN and KY [2014] UKSC 30 at [50]).
34. In SS (Sri Lanka) v SSHD [2012] EWCA Civ 155, Stanley Burnton LJ (with whom Maurice Kay and Lewison LJ agreed) observed (at [21]):

“Generally speaking, the weight, if any, to be given to expert (or indeed any) evidence is a matter for the trial judge ... A judge's decision not to accept expert evidence does not involve any error of law on his part, provided he approaches that evidence with the appropriate care and gives good reasons for his decision”.

35. That comment applies with equal force to assessing the weight to be given to Mr Ahmed's report.
36. Mr Ahmed is a Somali-speaking lawyer qualified in England and Wales with some experience of working in government as a legal adviser in relation to Somalia. He also has a degree in Law and Social Anthropology from the London School of Economics. However, apart from being a speaker of Somali, there was nothing in his report or before the judge which marked him out as a linguistic expert. A linguistic expert may well speak a language fluently but his expertise is in analysing speech or the written word by others and assessing its origins. Simply, for example, because an individual is a fluent speaker of English and has command of that language does not mean that that individual is an expert in linguistic analysis so as to be able to assess whether another individual is speaking English because, for example, he or she lives in England (rather than has acquired English whilst living elsewhere) or speaks a particular dialect of English or speaks English with a particular accent. In that regard, therefore, the judge did not err in law in giving Mr Ahmed's evidence concerning the appellant's linguistic origins little weight. He was not a linguistic expert.
37. Likewise, nothing before the judge established whether Mr Ahmed was, indeed, an expert on Somali clan structures. He may well, as a result of his experience, have some knowledge of Somali clans but neither his academic nor practical experience made it *ipso facto* clear that he was an authority or had expertise.
38. Equally, the judge was entitled to take into account that Mr Ahmed gave no detail as to the questions he had asked the appellant which had led him, in part, to his conclusion that there was a "high degree of probability" that the appellant was a member of the Tuni clan.
39. I am unpersuaded that the judge erred in law in assessing what weight to give to Mr Ahmed's report for the reasons that the judge sets out at some length in paras 29–31 of his decision. For these reasons, I reject ground 2.

Ground 3

40. Ground 3 is linked to, but separate from, the challenge to the judge's approach to Mr Ahmed's report. Principally, it relates to the judge's comment in para 32 concerning criticisms of the Sprakab language assessment relied on by Judge Walters in the earlier appeal. Paragraph 7 of the grounds states:

"The Tribunal Decision rightly acknowledges that Sprakab assessments are questionable (para 32) but errs in nevertheless accepting Judge Walter's findings would not have been affected by such shortcomings."
41. At para 32 the judge said this:

"Mr Ahmed also criticises the conclusions of the Sprakab language assessment that was relied upon by the respondent in the appeal

before Judge Walters [AB/62]. While I accept that the Supreme Court in the case of *N v Advocate General for Scotland* [2014] UKSC 30 cast doubt on Sprakab's past practice of commenting on claimants' knowledge of a country (and, indeed Judge Walters did appear [to] rely on Sprakab's evidence in this regard), it also held whilst not infallible, Sprakab's assessment of language could be accepted unless the evidence showed otherwise. In the present case, Mr Ahmed has acknowledged that he is not an expert on linguistics and, in my view, his views cannot be said to be sufficiently weighty to undermine the findings of Judge Walters on this point".

42. In MN and KY, the Supreme Court, as I have noted above, did differentiate between the approach a judge should give to the opinions expressed in Sprakab Reports concerning, on the one hand, linguistic analysis and, on the other hand, the knowledge of an individual about their claimed home area (see [51]). Mr de Ruano relied on para 7 of the grounds that the judge: "errs in nevertheless accepting Judge Walters' finding would not have been affected by such shortcomings".
43. In para 9 of his decision, Judge Hoffman, when referring to the respondent's decision letter, commented that Judge Walters:
- "did not accept that the appellant was Somali because he spoke a variety of Somali spoken in Kenya, Judge Walters also placed weight on the Sprakab Report's findings that the appellant did not display any knowledge of the Mogadishu area or the sub-clan that he claimed to belong to (see paras 8 to 10 of the decision letter)".
44. It is not entirely clear what the error of law is being asserted in para 7 of the grounds. The judge referred to Mr Ahmed's criticism of the Sprakab language assessment but, of course, Mr Ahmed – unlike the Sprakab assessors – is not a linguistic expert. Likewise, even if after MN and KY care must be taken in relying on opinions expressed in Sprakab Reports about "knowledge of country and culture", again Mr Ahmed's expertise was not established. Judge Hoffman had, therefore, no obvious evidential basis to undermine Judge Walters' finding that the appellant had not established his Tuni clan membership. Importantly, however, given the burden of proof was upon the appellant, there was no significant evidence before Judge Hoffman to establish that clan lineage once Mr Ahmed's report had been properly taken into account but not, as the judge was entitled to do, given sufficient weight to carry the appellant's claim.
45. I, therefore, reject ground 3 that the judge erred in law in para 32 in rejecting the contention that Mr Ahmed's report undermined Judge Walters' findings and, in the context of the evidence before Judge Hoffman, could, or should, have led Judge Hoffman to reach a different conclusion on the appellant's clan affiliation.

Ground 4

46. Mr de Ruano did not address this ground in his oral submissions. Para 8 of the grounds states succinctly that it was wrong of the judge to find that

the appellant's "distant relatives would definitely be able to support" the appellant on return to Mogadishu because that was speculative and not founded on any solid evidence.

47. At para 37, the judge noted that the appellant had said in cross-examination that he was in contact with "distant relatives" from his clan living in Mogadishu but he claimed that they would not be able to help him find a job or place to live on return. The judge said this:

"In submissions, Ms Mepsted asked me to find that the appellant could avail himself of the assistance of his distant relatives to help re-establish himself on return. In my view, I can only attach limited weight to the appellant's claim that his distant relatives would be unable to help him on return given that his evidence here inevitably could be said to be self-serving".

48. It is not entirely clear precisely the issue which the judge thought, in terms of risk on return, this matter related to. He referred to MOJ & Ors and the headnote at para (viii). That provides as follows:

"(viii) The significance of clan membership in 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 minority clan members".

49. As this recognises, unlike at earlier times, membership of a minority clan is not determinative or significant in determining whether an individual faces a real risk of persecution in Mogadishu. The basis of clan membership is now related to social support mechanisms. Its relevance is, in large measure, to issues of the reasonableness of internal relocation to Mogadishu (irrelevant to the appellant who comes from Mogadishu) or to Art 8 of the ECHR and the individual's circumstances on return. The factors set out in MOJ & Ors at [407(f)]-[407(h)] do not even relate to the issue of whether a breach of Art 3 is established (see Said v SSHD [2016] EWCA Civ 442 at [26]-[28] and SSHD v MS (Somalia) [2019] EWCA Civ 1345 at [76]). It was, therefore, not material to the judge's assessment of the appellant's risk on return either under the Refugee Convention or under Art 15(c) although it could be relevant under Art 8. However, in that regard the judge went on to find in paras 38 and 39, that as regards financial assistance in order to live in Mogadishu, the appellant would continue to have financial assistance from his sisters in the UK which would help him to re-establish himself. That finding is not challenged in the grounds. And provides a sound evidential basis for the judge's ultimate finding that the appellant would be able to re-establish himself in Mogadishu on return.

Ground 5

50. Mr de Ruano did not address this ground in his oral submissions. In para 9 of the grounds the judge is criticised for finding in para 50 of his decision

that it had not been established that there was “family life” between the appellant and his adult siblings and mother in the UK because there was nothing “more than normal emotional ties” between them. The ground simply asserts that the judge failed to address the fact that these were the appellant’s only family and “they all have had to flee their country, bringing them closer to each other”.

51. In para 50, the judge correctly directed himself applying the approach to Art 8 and “family life” set out in Kugathas v SSHD [2003] EWCA Civ 31 which remains good law (see, e.g. Rai v ECO, New Delhi [2017] EWCA Civ 320 at [17]). He accepted in para 49 that the appellant had established private life in the UK, since he arrived eleven years ago, “primarily with his sisters and mother”, but, in para 50, he did not accept there was family life:

“In the present case, I do not accept that the appellant has discharged the burden of demonstrating a relationship above normal emotional ties exists between him and his mother, whom he does not live with”.

52. Then at para 51 the judge went on:

“As for the appellant’s sisters, while I accept that the appellant lives with [R] and that all three sisters provide some form of financial assistance to their brother, the evidence before me does not demonstrate that this goes beyond normal emotional ties between adult siblings”.

53. The bare assertion that the judge erred in law by failing to take into account that the family was close because they had all fled Somalia, comes nowhere establishing a material error of law in the judge’s reasons leading to him finding that family life had not been established with his family in the UK. As I have already said, the judge correctly directed himself in line with Kugathas. It is difficult to conceive that the judge, given the nature of the evidence presented to him, was not aware of the fact that the appellant with his sisters and mother had fled Somalia. He dealt with their circumstances in the UK including that the appellant did not live with his mother but that he did live with one sister and obtained some financial support from them. The appellant’s mother, although she had submitted a witness statement setting out her medical condition, had not attended court to give evidence and the judge was, in those circumstances, entitled not to accept her health problems were established as she claimed.
54. Having considered all the evidence, and the judge having applied the correct legal approach, his finding can only amount to an error of law if it is Wednesbury unreasonable or irrational, namely it was a finding that no reasonable judge properly directing himself could reach. That, in my judgment, is not established. The judge was reasonably entitled to find that the relationship between the appellant and his adult siblings and mother in the UK, though close, was no more than would usually be expected between an adult individual and his adult family. That was not

such as to amount to “more than normal emotional ties” and “family life” for the purposes of Art 8.1.

55. For these reasons, I reject ground 5.

Conclusion

56. I have not directly addressed Mr Avery’s submission that, in effect, the judge rejected the appellant’s international protection claim because he found that the appellant was not at risk on return as an ordinary citizen returning to Mogadishu and that there was no real risk of persecution or of serious harm falling within Art 15(c) as a result of Al-Shabab in Mogadishu (see paras 41 and 42). It may well be that the finding followed, both in relation to the Refugee Convention and under Art 15(c), regardless of the appellant’s clan membership. However, given that the judge made the finding that the appellant had not established that he was a member of the Tuni clan, it is unnecessary to express any further view on Mr Avery’s submission on this issue.

57. For the above reasons, the judge did not materially err in law in dismissing the appellant’s appeal on asylum, humanitarian protection grounds or under Art 8 of the ECHR.

Decision

58. The decision of the First-tier Tribunal to dismiss the appellant’s appeal did not involve the making of an error of law. That decision, therefore, stands.

59. Accordingly, the appellant’s appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb
Judge of the Upper Tribunal
10 August 2021