



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00067/2019

THE IMMIGRATION ACTS

Heard at Field House
On 1 June 2021

Decision & Reasons Promulgated
On 08 July 2021

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

M E
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah instructed by Duncan Lewis & Co Solicitors
(Sackville House, London)
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Somalia. He appealed to the First-tier Tribunal against the respondent's decision of 13 May 2019 revoking his refugee status, and a decision of 23 May 2019 to deport him as a foreign criminal. The judge dismissed his appeal, concluding that the respondent was correct in revoking the appellant's refugee status and not accepting that his appeal under Article 3 of the European Convention on Human Rights could succeed.

2. The appellant sought permission to appeal against the judge's decision. Permission was refused by a Judge of the First-tier Tribunal, but subsequently a Judge of the Upper Tribunal granted permission, limiting her grant of permission to two matters. The first of these was that it was arguable that the judge had failed to engage in any meaningful way with the expert report that had been provided in deciding not to depart from the country guidance in MOJ [2014] UKUT 442 (IAC), and also in failing to apply the country guidance in MOJ adequately. It was noted that there was no challenge to the judge's reasoning and findings on section 72 of the Nationality, Immigration and Asylum Act 2002 and that therefore Grounds 1 and 2 could only refer to the appellant's humanitarian protection claim and the related Article 3 claim. Ground 3, which argued that the judge had erred in finding that the appellant did not have family life with his mother and sister was regarded as being unarguable.
3. Following a note and directions of 16 April 2020 both the appellant and the respondent provided written submissions, and subsequently on 7 July 2020 Upper Tribunal Judge Finch considered the matter on the papers and found an error of law, setting aside the decision of the First-tier Tribunal.
4. Among other things she noted the limitation in the grant of permission by Upper Tribunal Judge Gill, and a contention made on behalf of the respondent that the grounds could only relate to Article 3. Judge Finch however considered that in fact the appellant was correct in this regard in that the issues before the Tribunal were humanitarian protection and Article 3.
5. At the hearing before me it was agreed that there was no need to call the character witnesses Mr Blackwood and Mr Hassan, who had both provided witness statements. Mr Tufan was happy for their evidence to stand and that they would not be criticised on the basis that there had not been an opportunity to cross-examine them.
6. The appellant gave evidence. He was referred to his witness statement of 18 September 2019 and his more recent statement of 20 May 2021 and confirmed that he had signed them and read them and that the contents were true.
7. In cross-examination he was asked what language he spoke to his mother in and he said in English and broken Somali. He was asked whether his mother spoke English and said that she understood it better than she spoke it.
8. His brother was still in prison. As to whether he was supported financially by the family he had a job while in prison and of course had no rent to pay.
9. There was no re-examination. The next witness was the appellant's mother. She was referred to her witness statements of 18 September 2019 and 1 June 2021 (the latter of which she signed on her copy today). She had had the opportunity to read them and had them read to her in a language she understood and they were true.

10. In cross-examination she was asked which language she spoke to the appellant at home in and she said English but sometimes the words were difficult and they had a way to understand each other. She was asked whether she spoke Somali to him and said he did not know Somali: very little.
11. Her other son was still in prison. She did not see him but supported him financially, sometimes but not all the time. On re-examination she was asked to explain the last answer and said that she received benefits so she could not support him all the time and as to how often she supported him, it was every couple of months perhaps every four months when she would send £30.
12. In his submissions, Mr Tufan argued that the appellant was a serious criminal with a plethora of convictions including most recently one for 90 months. He had been assessed as posing a medium risk of harm to the public.
13. There was an expert report and a more recent update. This went behind the current guidance in MOJ, but it was argued that it was insufficient to depart from the country guidance. It had been made clear in SG (Iraq) [2012] EWCA 940, that decision makers and Tribunal Judges were required to take country guidance determinations into account and to follow them unless very strong grounds supported by cogent evidence were adduced justifying their not doing so. It had been held in MOJ that Mogadishu was a safe place to return to and Al Shabaab did not have a material force there and there were more recent authorities such as Saeed and MS (Somalia). Even if the appellant ended up in an IDP camp his Article 3 rights would not be breached.
14. There was evidence from an earlier decision that the appellant spoke some Somali and was from a majority clan, the Dawod. Reference was made to a recent Upper Tribunal case in SB [2019] UKUT 00358.
15. From the evidence at the hearing the appellant's mother sent money to the brother: intermittently but funds were provided. In SB there was emphasis on the availability of £1,500 for a facilitated return scheme. The appellant in that case had been a minority clan member from the Bajuni and it was held that he could be safely returned to Mogadishu. It was also the case that that appellant, like the appellant in the instant appeal, spoke some Somali.
16. There was nothing to indicate that the appellant would end up in an IDP camp as his mother could send money, but even if he did, that would not be a breach of Article 3 on the basis of the current country guidance. There were no Article 15(c) issues. The appellant would not be at risk in Mogadishu by his mere presence. It was relevant to bear in mind, with respect to the point that he had come to the United Kingdom at the age of 1, what had been said by Lord Justice Sales in Mwesezi [2018] EWCA Civ 1104 where the appellant had come to the United Kingdom at the age of 2. That was a case involving a national of Sierra Leone and the case was on its own facts. The appellant had been exposed to Somali culture and spoke some Somali and would not

be at risk in Mogadishu on the basis of the current case law. Reliance was also placed on the earlier written submissions of Mr Clarke.

17. In her submissions Ms Appiah argued that with regard to the serious offence and medium risk of harm points the assessments spoke for themselves with regard to past conduct but it was necessary to look at the position as of today and how the appellant would fare if he were deported to Somalia. The Devaseelan guidance applied, but the passage of time could lead the Tribunal to find that it could go beyond the earlier findings.
18. The appellant had set out in his most recent statement the work he was currently doing and there was also the evidence of Mr Blackwood and Mr Hassan in this regard. He was trying to behave differently from what he had been. His mother's witness statements were also relevant and there were also the emails from the most recent probation officer Ms Rodgers in the bundle at pages 23 to 24. The theme was constant as being one of someone who had managed to turn his life around.
19. The main thrust of the appeal was Article 3 and humanitarian protection. Ms Appiah relied on her written submissions as to the situation for the appellant in Somalia. As regards the first expert report there should be a departure from the country guidance in MOJ and it was questioned at paragraph 18 of the written submissions whether it was good law. The Secretary of State said that on the cases it was very safe for the appellant to return to Somalia. It was said that he will have support from his mother and can be in a refugee camp but the Tribunal was asked to look at the situation for the appellant and the evidence about him. It had not been said that the expert's evidence was inaccurate and it had not been criticised today. There was a challenge in the earlier Secretary of State's submission that it was general rather than specific but that was disagreed with and there was a lot of information about the position in Somalia on the ground.
20. As regards the £1,500 relocation grant, Ms Appiah did not know if that still existed and as the point that had been made about money being sent to the appellant's brother and potentially to him it was £30 every four months. It was unclear how that would begin to assist someone who had not lived in Somalia since he was aged 1. He and his mother said he spoke English and it was accepted that there was some limited evidence that he spoke a little Somali but not enough to get through. Reference was made to the expert report in this regard concerning westernised people in Somalia and this was relevant to risk. The report also looked at the general security situation and the evidence as to indiscriminate acts and with regard to clans, which was also a point that had been made by Upper Tribunal Judge Finch in her error of law decision. There was not clan protection now.
21. The expert report also dealt with the humanitarian situation and gave up-to-date evidence, in contrast to what Mr Tufan cited. The appellant argued that the appeal should be allowed in the current circumstances as he had effectively spent all his life in the United Kingdom and had his family here and had been brought up in a

multicultural country. The expert report also dealt with the situation of the appellant's brother who, since he was still in prison, would be unable to assist the appellant in Somalia and so was essentially irrelevant to the appellant's return. The expert had also referred to the current material about risk on return. The appeal should be allowed.

22. I reserved my decision.
23. The appellant came to the United Kingdom on 24 January 1990 when he was 1 year old. The family were granted refugee status later that year and subsequently limited leave to remain and thereafter indefinite leave to remain.
24. The appellant has a criminal record relating back to an appearance at Harrow Crown Court on 19 May 2006 on charges of burglary and theft and common assault, and a number of offences thereafter culminating in a conviction on 14 December 2012 of two counts of wounding with intent to do grievous bodily harm, assaulting a person, thereby occasioning actual bodily harm, violent disorder. He was sentenced to ninety months' imprisonment concurrent in relation to count two, three years' imprisonment concurrent in relation to count three and three years' imprisonment concurrent in relation to count four and this amounted therefore to a total of seven years and six months' imprisonment.
25. He had previous appeals against deportation decisions and, as noted above, the most recent decision was made in 2019 which led the appeal to Judge Khan, which was dismissed but that decision, as noted above, was subsequently set aside.
26. The appellant's evidence in his witness statement of 18 September 2019 states, perhaps not surprisingly, that he has no memories of Somalia. He got involved while in prison with a project with Queens Park Rangers Football Club and his mentor there was Mr Blackwood who has also given evidence on his behalf. He expresses sorrow and remorse for his previous convictions and says that he has matured a great deal and is determined to turn his life around, particularly in working with young people.
27. He refers to the fact that since the previous statement he has completed a course arranged through the Probation Service and he continues to volunteer at the football academy and is still being mentored by Mr Blackwood. He refers to difficulties he would have in Somalia from such things as wearing shorts for football and the lack of money that he has and the passion that he now has for mentoring youths. He again expresses remorse for his previous offending and for the pain that he caused.
28. In her earlier witness statement the appellant's mother refers to the fact that her sons can speak a bit of Somali but she says she sometimes cannot help but laugh when they do so as they have strong British accents. She refers to the unsafeness in Somalia. She also refers to the help that she has from her son since his release on bail from immigration detention.

29. In her most recent statement she referred to her health problems, to the danger of the situation in Somalia and the fact that if her son were taken away and sent to Somalia her life and health would collapse. She asked that he be given another chance.
30. In his statement Mr Blackwood, who is a youth and communities officer at QPR Trust at Kiyon Prince Foundation Stadium, refers to having known the appellant since 2017 and the role played by the appellant in supporting the programme. He refers to the value of the appellant's lived experience and transformation and the fact that his safeguarding team are satisfied that the appellant poses no significant risk, hence him being allowed to volunteer with them. He said that the appellant has remained steadfast in his attitude and application and is genuinely a pleasure to work with as he holds no animosity, rarely looking backwards and wants to give and help the potential younger versions of himself. He considers that given the chance to remain in the United Kingdom this would prove a positive and productive decision for the appellant's benefit and the many young people he has supported.
31. In his letter Mr Hassan, who is the chairman of Hillside Athletic Football Club, says that he has known the appellant since 2004 and that the appellant as an assistant coach and fitness coach is an active member in the team and plays a vital role in helping youths enhance their fitness levels and playing ability and that he gives back to the community and that his story is inspired by many young people to do well and stay on the right track. He speaks very positively of the appellant.
32. In the email from Ms Rogers, to whom the appellant's case was handed on 12 December 2019 there is reference to the work sheets that have been completed by the appellant, and the fact that he remained motivated to complete the work sheets at home and during their supervision sessions. He was willing to discuss all areas of his offending behaviour whilst showing continuous regret and remorse for what he had done. During this period he had recognised that his maturity had an impact on his decision making and recognised the impact this had on his behaviour. She was impressed with his motivation to change and his dedication to return to football to continue his passion. She said that although she did not supervise the appellant for a long period of time, he was very polite and respectful throughout their supervision appointments, complied with all licence conditions and remained motivated to change his offending lifestyle and use that experience to guide teenagers away from engaging in offending behaviour in the local community.

The Law

33. The burden of proof is on the appellant to show that there are serious grounds for believing that he will suffer serious harm and is therefore entitled to humanitarian protection in accordance with the provisions of paragraph 339C of HC 395. This states as follows:

“A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he does not qualify as a refugee as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) substantial reasons have been shown for believing that the person concerned, if he is returned to the country of return, would face a real risk of suffering serious harm and is unable, or owing to such risk, unwilling to avail himself of the protection of that country; and
- (iv) he is not excluded from a grant of humanitarian protection.

Serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”

34. Article 3 of the European Convention on Human Rights prohibits torture or inhuman or degrading treatment or punishment and the appellant has to show that there are substantial grounds for believing that there is a real risk of such prohibited ill-treatment and that that treatment would meet the minimum level of severity required under Article 3.

Discussion

35. In the country guidance in MOJ (Return to Mogadishu) [2014] UKUT 442 (IAC), it was said 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) on 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 real 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-Shabaab or by Al-Shabaab as an apostate or

someone whose Islamic integrity has been compromised by living in a western country. It was said that there had been durable change in the sense that Al-Shabaab's withdrawal from Mogadishu was complete and there was no real prospect of a re-established presence within the city. There had been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al-Shabaab's resort to asymmetrical warfare on carefully selected targets. It was said 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.

36. It was further said that it was open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of "collateral damage" in being caught up in an Al-Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al-Shabaab targets, and it is not unreasonable for him to do so. It was said that there was no real risk of forced recruitment of Al-Shabaab for civilian citizens of Mogadishu, including for recent returnees from the rest. 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. Although a returnee may also seek assistance from his 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. It was said further that the significance of clan membership in Mogadishu had 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. It is further said that if it was 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 the circumstances. Those considerations would include, but were 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 enabled the appellant to secure financial support on return. In effect therefore the person facing return will have to explain why he would not be able to access the economic opportunities that had 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. Therefore only those with no clan or family support who would not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return would face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms. It was not simply those originating from Mogadishu who might now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. However, relocation in Mogadishu for a person of a minority clan with no formal links to the city and, no access to funds and no other

form of clan, family or social support would be unlikely to be realistic as 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 camp where there was a real possibility of having to live in conditions that would fall below acceptable humanitarian standards.

37. In her first report, dated 17 September 2019, Ms Karen O'Riley who has written a number of publications and in the past has filled such roles as human rights education officer for Amnesty International, protection officer for UNHCR in Uganda, refugee resettlement expert UNHCR in Jordan and refugee re-settlement expert UNHCR in Central African Republic, Kenya and West Africa, states that at the time when the appellant's family fled, members of the Darood clan were forced out of Mogadishu. She says that currently security in Somalia is extremely high, the humanitarian situation is dire and the number of internally displaced people, many living at risk of serious abuse, has reached an estimated 2.7 million. She says that since the Home Office referred to Al-Shabaab withdrawing from Mogadishu in August 2011, since 2014 Al-Shabaab have regained power in the last two years and are reported to be more powerful about any time since 2011. There is reference to Al-Shabaab continuing to carry out deadly attacks throughout the country including Mogadishu and that it holds territories surrounding Mogadishu from which it coordinates complex attacks targeting the Somali Federal Government.
38. She says that clan militias are now present and accurate in Somalia in a variety of areas and that clan conflict has increased as a result of drought and food shortage in the last two years.
39. She says that the humanitarian situation in Somalia has severely deteriorated in recent years and remains precarious for much of the population. She considers that the appellant is at risk of being attacked, killed, abducted or forcibly recruited by Al-Shabaab. The report for the Norwegian Association for Asylum Seekers says that though Mogadishu is formally under government control, Al-Shabaab is everywhere. There is also reference to evidence stating that Al-Shabaab is always suspicious of migrating people so relocation to Mogadishu can itself lead to suspicion. Even if he were able to resist joining the group, the appellant would be at risk of being forcibly recruited or kidnapped by Al-Shabaab.
40. He would be at risk as a returnee from the West as he has been living in the West for almost his entire life and has un-Islamic habits such as drinking alcohol. He does not have family or community he can rely on for support in Somalia, which makes him even more vulnerable to persecution from Al-Shabaab. There is a lack of state protection and lack of government control. It is said that clan protection functions better than protection by the state or the police, as he has lived outside Somalia since he was a baby and does not have any connections to or within his own clan., as such this is not a guaranteed source of protection to him.

41. She refers to deterioration in the economic situation in Somalia since MOJ and there is reference to the US State Department report of 2017 to limited employment opportunities in the southern and central sections of the country for refugee returnees from Kenya. There are high chances of the appellant being forced to relocate to an IDP settlement given how difficult it would be for him to support himself in Mogadishu or another town, the conditions in IDP camps in Somalia are dire with extremely poor living conditions and they are also dangerous.
42. This report was criticised in written submissions put in on behalf of the respondent, dated 7 May 2020. It was argued that in general terms the report cannot conceivably amount to the strong grounds and cogent evidence required to depart from MOJ. It was argued that the report's reasoning is flawed and that citation is limited and that it erroneously uses examples of conditions outside Mogadishu as evidence of a change in country conditions within Mogadishu.
43. It is noted that in MOJ the Upper Tribunal had accepted that since Al-Shabaab's withdrawal from Mogadishu in 2011 if it had continued to carry out targeted attacks on politicians, police officers, government officials and those associated with NGOs and international organisations and as such found no Article 15(c) risk to an ordinary civilian even if they had lived in Europe and were perceived as someone whose Islamic integrity was compromised. They could avoid high risk areas.
44. It was argued that the expert gave no casualty figures to quantify any alleged increase in violence, let alone also, it is said, the fact that the expert gives no example of indiscriminate attacks as opposed to targeted attacks. It is argued that the expert relies throughout pages 28 to 39 of her report on evidence relating to the position outside Mogadishu without acknowledging the geographical and political distinction between Mogadishu and elsewhere. The fact that Al-Shabaab continue to carry out attacks was evidence that was accepted in MOJ. Evidence suggesting an ability to conduct attacks and that Al-Shabaab might be preparing targeting showed a limit on the evidence provided.
45. It is also argued that the country guidance is specific to Mogadishu and that where the expert claims that since the country guidance the position regarding clan militias had deteriorated, there was a failure to mention Mogadishu but there was reference to areas outside Mogadishu and there was no evidence that the position in Mogadishu had changed. Again, with regard to the reliance on pages 46 and 47 of the report to support the contention that a range of abuses awaited the appellant on return, neither paragraph referred to Mogadishu and there was a reference simply to Somalia at paragraph 58.
46. The report is criticised for relying on historic reports from 2013, relied on in turn by the Norwegian Association for Asylum Seekers, which was old and also based exclusively on anecdotal evidence. Again it was argued with regard to paragraphs 45 to 52 that the expert's response failed to engage with any evidence specific to Mogadishu. It was argued in summary that the expert has failed entirely to identify

any evidence to suggest that the appellant's presence in Mogadishu would be any different from when MOJ was promulgated and had failed to identify in evidence that targeting of civilians in Mogadishu has changed since MOJ. There was therefore no evidential basis for the suggestion that the appellant might voluntarily join Al-Shabaab. The evidence was criticised as being anecdotal and insufficiently referring to the situation in Mogadishu. It was also argued that the assertion the appellant would have no clan support because he has been away from Somalia is not founded upon any examples at all. There is no addressing of the present circumstances of the majority Darood clan and no evidence that that clan would be unwilling to assist the appellant. On the basis that the evidence is not properly made out that the appellant would be extremely vulnerable to persecution at the hands of Al-Shabaab and at risk of interclan violence and at risk of destitution, it is argued that there is not cogent evidence that the position in Mogadishu has changed.

47. In Ms Appiah's written submissions on 13 May 2020 the expert's report is defended. Reference is made to the differences between 2014 and the time when the expert report was written. It is argued that the respondent is wrong to suggest that the expert barely touches upon the clan issue. It is said to be clear from her report that clan membership does not assist a person from a majority clan where events have been taken over by the general country hardships and attitudes being largely mercenary and political in nature. It is argued that the evidence from the case clearly departs from that when MOJ was decided.
48. In her updated report the expert states among things that the security situation in Mogadishu has severely deteriorated in recent months with the city enduring some of the worst conflict in years. There has been fighting between security forces and opposition soldiers. The political furore threatens to distract Somalia's armed forces from fighting Al-Qaeda linked insurgents. Residents of Mogadishu have been forced to flee their homes as a result of the violence. There is reference to Al-Shabaab killing five people and injuring ten civilians at a hotel in Mogadishu and also a suicide bombing near Mogadishu, in January 2021, to a car bomb in Mogadishu which killed three and wounded eight and gunfire in Mogadishu with five soldiers killed and many civilians injured in February, a suicide car bombing in Mogadishu with twenty people killed and 30 wounded in March and six people killed in a suicide attack on a restaurant in Mogadishu in April. Al-Shabaab claimed to be responsible for the 9 May bombing in Mogadishu in which six police officers were killed and six others injured. Also Al-Shabaab continued to target civilians deliberately, being responsible for 60% of civilian casualties between 2019 and 2020. Human Rights Watch in its 2021 report noted that Al-Shabaab continued to target civilians and that by early August (presumably in 2020) the United Nations Assistance Mission in Somalia recorded at least 596 civilian casualties, including 296 killings, by early August, the majority being due to Al-Shabaab-targeted in indiscriminate attacks. Al-Shabaab committed religiously and politically motivated killings that targeted civilians affiliated with the government and attacked humanitarian NGO employees. It is said that Al-Shabaab has increased drastically in strength and reach since 2018. Amnesty in its April 2021 report referred to Al-Shabaab continuing to enjoy

impunity for frequent and indiscriminate attacks targeting civilians and in civilian infrastructure including restaurants and hotels. Those more “westernised” are all routinely suspected of being spies and Al-Shabaab continued to execute those accused of spying for foreign forces. It has an extensive intelligence network, which increases the chances that they will know about an individual and their background and identity.

49. The appellant is said to be at risk on the basis of being westernised, having lived almost his entire life in the West. The expert refers to the appellant’s mother saying that she cannot help but laugh at the appellant’s Somali accent, and she also refers to his lifestyle and his interests and his essential westernisation. He would be at risk as a consequence of detention, torture death at the hands of Al-Shabaab in areas they control. His British accent, lack of fluent Somali and lack of knowledge about/background in Somalia or Somali customs that put him at risk of being seen as someone who is clearly “westernised”. She says that he would be at risk from Al-Shabaab in areas outside its control as well given that it has a presence and carries out attacks in areas that it does not control such as Mogadishu.
50. She states that the security situation in Somalia has continued to deteriorate, citing the US State Department and Amnesty International referring to ongoing conflict including the government militias in Al-Shabaab and indiscriminate attacks against civilians and civilian targets. She refers to an article quoted by the Home Office that Al-Shabaab’s forces have lost control of the capital and other cities but retained control of large rural swathes of the country.
51. She also refers to interclan violence and the rift between forces loyal to the president and his rivals being influenced by the powerful clan divisions in Somalia.
52. She says that the current humanitarian situation in Somalia is dire as a result of prolonged drought, floods, resulting disease, COVID-19, food insecurity and a locust invasion and the situation is not expected to improve in 2021. The level of food insecurity is critical and health outcomes are among the worst in the world. The appellant is at risk of destitution, in a country where the majority of young people are unemployed, there is a poverty rate of 73%. There is a severe lack of access to the labour market in urban settings and the appellant is said to be highly likely to be homeless and destitute if returned to Somalia, which increases his vulnerability to disease, insecurity, violence, persecution and recruitment by Al-Shabaab. He may be forced to move around in order to find work and to find shelter and his vulnerability will be at least as great as any other internally displaced person. Such people are the most vulnerable group in Somalia, being disproportionately affected by the COVID-19 pandemic and being forced to live in severely overcrowded conditions. Though many of them earned an income from the informal economy, COVID-19 related restrictions prevent them from earning a living and meeting basic needs like water, food and sanitary items. In sum she concluded that the appellant is in need of international protection and it is overwhelmingly likely that his return to Somalia

would expose him to inhumane and degrading treatment, and his brother who is equally vulnerable would not be able to provide him with protection.

53. In light of Ms O'Riley's conclusions, it is clear that in her view the appellant's profile is such as to place him at Article 15(c)/Article 8 risk on return to Somalia. I will come back to her evidence shortly. But before that it is necessary to consider whether, if the guidance of the MOJ is not to be departed from, the extent to which the appellant falls within that guidance.
54. He is clearly an ordinary civilian as defined in that decision, and as such it is said he would generally face no risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, as noted in that decision, he will not be at real 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 Al-Shabaab supporter or by Al-Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a western country. The level of casualties at that time was not said to amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk. In addition it would be open to the appellant as an ordinary citizen in Mogadishu to reduce risk by avoiding areas and establishments clearly identifiable as likely Al-Shabaab targets. With regard to headnote (vi) in MOJ, it was found that there was no real risk of forced recruitment by Al-Shabaab for a civilian citizen of Mogadishu including a recent returnee from the West, such as the appellant. As regards headnote (vii), the appellant does not have a nuclear family living in the city, but as a majority clan member, a member of the Darood clan, as a majority clan it would seem that he would be able to seek assistance from clan members. The clan potentially provides social support mechanisms and assistance with access to livelihoods, performing less of a protection function than previously. At the time it was said that there were no clan militias in Mogadishu, no clan violence and no clan-based discriminatory treatment, even for minority clan members, of which of course the appellant is not one.
55. As regards (ix) of the guidance, the situation in Mogadishu was clearly very different before the appellant left and he has been absent for the best part of 30 years. He has no family in Mogadishu but he can call upon the Darood, a majority clan, of which he is a member. As regards access to financial resources, it seems from the guidance in SB to which I was referred above, that he may be eligible for a £1,500 relocation grant, and also might receive some minimal funds from his mother, who provides a small level of assistance to his brother in prison currently. He has little by way of employment record, though he is currently working as a motivator for young people. There is, looking at (x) of the country guidance, no reason shown why he would not be able to access the economic opportunities that have been produced by the economic boom in Mogadishu, particularly bearing in mind the evidence to the effect that returnees were taking jobs at the expenses of those who have never been away. So he is not a person without clan support though he does not have family support in Mogadishu and he may be in receipt of some small level of remittance from the

United Kingdom and has not shown that he has no real prospect of securing access to a livelihood on return. As a consequence he does not, on my findings on the evidence, satisfy the requirement in (xi) of the country guidance of showing that he would face the prospect of living in circumstances falling below that acceptable in humanitarian protection terms.

56. As regards Ms O'Riley's evidence, I remind myself that I am required to take the country guidance into account and follow it unless there are very strong grounds supported by cogent evidence justifying me in not doing so.
57. As noted above, the written submissions of Mr Clarke in particular subjected the first report of Ms O'Riley to cogent criticism. It is relevant to note that in the country guidance in MOJ it was said that the Al-Shabaab withdrawal from Mogadishu was complete and there was no real prospect of a re-established presence within the city. It is relevant to bear in mind the point made at paragraph 8 of the Secretary of State's written submissions that no casualty figures are offered by Ms O'Riley to quantify the alleged increase in violence, and though the evidence cited by Ms O'Riley refers to a resurgence by Al-Shabaab, it appears to remain the case that Al-Shabaab does not have a re-established presence within Mogadishu though it is carrying out attacks there, but of course it was the case that attacks were being carried out by Al-Shabaab in Mogadishu at the time when the guidance in MOJ was provided, and it was it taken into account. It appears that there is no re-established presence, though there may have been an increase in the level of attacks. It is necessary to bear in mind that the guidance in MOJ was essentially in connection with Mogadishu, and I consider there is some force to the point made on behalf of the Secretary of State that a good deal of the evidence provided by the expert at paragraphs 28 to 39 concern the situation outside Mogadishu.
58. As regards the position of the clans, it is said that now there are clan militias present and active in Somalia contrary to the position in MOJ, but the expert refers to the clan militias being present and active in Somalia in a variety of areas rather than addressing the position specific to Mogadishu, and I agree with the submission made on behalf of the respondent that the expert report does not refer to any evidence that the position in Mogadishu has changed.
59. Again there is no specific reference to Mogadishu in the evaluation of the current humanitarian situation in paragraphs 46 and 47 of the expert report and in the subsequent paragraphs also the references are to the general situation in Somalia rather than specific position in Mogadishu.
60. There is also some force in the criticism of part of the expert report on risk of forced recruitment or targeted violence from Al-Shabaab, that there is a good deal of reliance upon evidence from 2013 and is also essentially anecdotal. I consider there is force to the point made that the expert has failed to reference any actual evidence of attacks in Mogadishu that are different from those in MOJ. It should be recalled

that attacks from Al-Shabaab in Mogadishu were taken into account in the guidance in MOJ.

61. I think there is some force in the point made in the expert report that the economic boom may to an extent have come to an end in Somalia and that is hardly unsurprising given, quite apart from anything else the pandemic of the last twelve to fifteen months. With regard to what she says about returnees to Somalia have very limited access to support from clan and family members, this is fairly generalised, referring to such points as the Ministry of Education saying there are no basic services available for returnees from the government, institutions or community, but INGO(D) believed it is difficult for a person who returns from abroad to access the necessary support and that a research centre (b) stated that since everyone is now fighting to survive in Mogadishu people have a limited ability to support others. It was said that returnees cannot rely on support from clan members or family members. INGO(D) said that clans constituted a type of safety net, but it could not be relied upon as a long-term solution, other sources referring to support for a day or two or around a week. Again therefore the position may have deteriorated to an extent, but the existence of the difficulty that is pointed to does not in my view amount to such as to give rise to a need for Article 15(c) or Article 3 protection. It was said by the Home Office in June 2017 that clan protection functions better than protection by the state or police, and the expert says with regard to this that since the appellant has lived outside Somalia since he was a baby and has no connections to or within his clan and as such this is not a guaranteed source of protection for him. She does not make clear why the lack of any immediate connections to the clan would leave him unprotected or unassisted, and the test is not one of a guaranteed source of protection in any event. There is, as the respondent has argued, no evidence that the Darood clan would be unwilling to assist the appellant.
62. I do not consider that the more recent report of Ms O'Riley adds anything of any materiality to the earlier report. I accept the point made that the appellant could not place any real reliance on his brother since he remains in prison and would not be accompanying him to Somalia. But the summary in particular, as set out at paragraphs 94 to 101 of Ms O'Riley's second report, is in essence very similar to what was said in the earlier report, focusing it does on the deterioration and the security situation in Somalia, increase in Al-Shabaab's power and the attacks it carries out throughout the country including Mogadishu, its targeting of civilians and the very high risk that is identified with the appellant being homeless and destitute in Somalia. I do not consider, taking matters as a whole, that the high test of very strong grounds supported by cogent evidence has been made out in this case such as to show that the country guidance should not be followed. On the basis of the guidance set out in MOJ I consider that the appellant has not shown that he faces a real risk of Article 15(c) ill-treatment or Article 3 ill-treatment.

Notice of Decision

63. This appeal accordingly is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date 30 June 2021

Upper Tribunal Judge Allen