



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA059022016

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)  
On 27 June 2017

Decision & Reasons Promulgated  
On 27 July 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

K M M  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Gardner instructed by South West Law  
For the Respondent: Mr D Mills, 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 [ ] 1972. He arrived in the United Kingdom on 21 December 2015 and claimed asylum. He claimed to be a member of the minority Bandhabow clan and to fear persecution in his home area. On 24 May 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

### **The Appeal to the First-tier Tribunal**

3. The appellant appealed to the First-tier Tribunal. Judge Rolt dismissed the appellant's appeal on all grounds. Although he accepted the appellant's clan and that the appellant was at risk in his home area, he found that he could safely and reasonably internally relocate to Mogadishu.

### **The Appeal to the Upper Tribunal**

4. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds challenging the judge's finding that the appellant could reasonably internally relocate to Mogadishu.
5. Permission to appeal was initially refused by the First-tier Tribunal but on 15 February 2017, the Upper Tribunal (UTJ Blum) granted the appellant permission to appeal.
6. On 23 February 2017, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision on the basis that the appellant could reasonably relocate to Mogadishu applying the country guidance decision of MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC).

### **The Judge's Decision**

7. In finding that the appellant could reasonably be expected to return and live in Mogadishu, the judge first set out the country guidance in MOJ and Others at para 56 of his determination. He found that the appellant could safely return to Mogadishu where he would not be subjected to an Art 15(c) risk. That finding was in accordance with MOJ and Others and was not challenged before me.
8. Then, the judge went on in paras 59-61 to consider the appellant's circumstance if he returned to Mogadishu. He accepted that he would have no family members there and was from a minority clan. Nevertheless, he accepted that the appellant, who had previously worked in Ethiopia, had not established that he could not find employment in Mogadishu. Further, his family abroad (including in the UK) who had previously provided funds could continue to provide support. At paras 59-61 the judge reasoned as follows:

- “59. This Appellant is not from Mogadishu. He has no family members living there and he is from a minority clan. However, he lived and worked and supported two families whilst living in Ethiopia and he did so successfully for many years. His medical problems do not appear to be causing significant impairment and he stated that the treatment he received in Ethiopia assisted him. Whilst the Appellant may have had a limited education he is not a man who has not (nor cannot) work. Whilst it appears that he obtained employment through a contact in Ethiopia that does not, in my judgement, mean that he would not be able to secure employment in Mogadishu, as appears to be suggested on his behalf. His family clearly assisted the Appellant by raising what must be considerable sums for his passage to the UK. Sufficient funds were raised for his mother to travel in 2015 to Addis Ababa. Clearly finances were found and made available to him to come to the UK.
60. I note that the Appellant’s brother states that he could not afford to assist him if he had to relocate to Mogadishu. I find this surprising in the light of the sums that the family have so far made available. The sums needed to assist the Appellant to relocate in Mogadishu would be limited. Once he had arrived and secured accommodation this Appellant, who has shown considerable resourcefulness would, in my judgement, be able to find work in the light of the economic circumstances in Mogadishu and would then be able to be self-sufficient. I do not find it credible that the family would stop providing support and assistance to this Appellant, the very person they thought had died in the attacks in 1991. I see no reason why the family would fail to assist in this regard. Whilst I accept that the Appellant’s mother and aunt are elderly, the aunt in the United States was able to raise considerable sums. The brother has work. His income is limited but he is not without means. There is family in Ethiopia. I do not have any specific details of their circumstances save the assertion that they are of limited means.
61. I consider that the family have sufficient funds and/or would find sufficient funds so that they would be able to support the Appellant and that he would be able to live a relatively normal life in Mogadishu. I do not consider that he would be destitute and forced to live in an IDP camp. This Appellant could live a relatively normal life in Mogadishu as judged by the standards that prevail in his county of nationality generally.”

9. At para 62, the judge reached the following conclusion:

“In the light of my finding I consider that it is not unreasonable for the Appellant to return to Somalia and relocate to Mogadishu and as such he does not qualify for international protection.”

### **The Appellant’s Challenge**

10. Ms Gardner, who represented the appellant submitted that the judge’s reasoning was deficient for a number of reasons.
11. First, it was wrong for the judge to infer that because the appellant had worked in Ethiopia prior to coming to the UK he would be able to find work in Mogadishu. His work in Ethiopia had been set up through a friend of an aunt and he had lost that job when the shop in which he worked was closed.
12. Secondly, Ms Gardner submitted that the judge had failed to take into account the UNHCR document “UNHCR Position on Returns to Southern and Central Somalia”

(May 2016) which post-dated MOJ and Others, in particular paras [12], [16] and [19] referring to the position in IDP camps, the pervasiveness of discrimination against minority clans and the importance of pre-identified accommodation and livelihood options in assessing whether it was reasonable to relocate.

13. Thirdly, Ms Gardner submitted that the judge had failed sufficiently to take into account the medical evidence concerning the appellant, namely that he had a bullet in his chest and left lung damage which the evidence showed would catch up with him in a decade or two. That was relevant to his ability to find work in Mogadishu.
14. Fourthly, Ms Gardner submitted that the judge had been wrong to find that the appellant's family could continue to support him. His brother in the UK was on NASS support and in receipt of child benefit and tax credits. She told me his net income was £4,400 (not £400 as stated in the grounds). His mother was in receipt of DWP support. His aunt in the US was no longer able to support him. Finally, the judge was wrong to state in para 60 that any support would need to be "limited" in the absence of evidence to underpin that conclusion.

### Discussion

15. In reaching his findings, the judge correctly referred to the relevant country guidance concerning relocation to Mogadishu in MOJ and Others. So far as relevant to this appeal, the relevant guidance is set out in the head note at paras (vii)-(xii) as follows:

“(vii) A person returning to Mogadishu after a period of absence will 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 for majority clan members, as minority clans may have little to offer.

(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.

(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:

- circumstances in Mogadishu before departure;
- length of absence from Mogadishu;
- family or clan associations to call upon in Mogadishu;
- access to financial resources;
- prospects of securing a livelihood, whether that be employment or self employment;

- availability of remittances from abroad;
- means of support during the time spent in the United Kingdom;
- why his ability to find the journey to the West no longer enables an appellant to secure financial support on return.

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

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

(xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is 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 is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.”

16. The judge correctly identified that the appellant was from a minority clan and also accepted that he had no family in Mogadishu. He would, therefore, be unlikely to obtain support from his clan (para (vii) of the head note in MOJ and Others) and could obtain no assistance from family in Mogadishu. As the head note in MOJ and Others makes plain, in those circumstances the judge was required to undertake a “careful assessment of all the circumstances” including but not limited to those set out in the eight bullet points in para (ix) of the head note.
17. Turning now to the first and third of Ms Gardner’s points, the judge found that the appellant would likely be able to obtain employment there. That is a relevant factor made plain in para (x) of the head note in MOJ and Others where it is stated that the “economic boom” provide economic opportunity for returnees (even at the expense of those who have remained in Mogadishu) and that an individual will need to explain why he or she would not be able to access those economic activities.
18. As regards the appellant’s employment in Ethiopia, the judge was no doubt aware of the appellant’s previous employment in Ethiopia and, as he specifically sets out in para 15 of the determination, that the work had been obtained at a shop through a contact with his aunt. The point being made by the judge in para 59, however, is that the appellant had experience of employment and that was relevant in assessing his chances of obtaining employment in Mogadishu. The judge was not inferring that because the appellant had been previously employed in Ethiopia then he would be

employed in Mogadishu. It was a simple, and common sense, point being made by the judge that past experience is a helpful feature when seeking future employment.

19. Further, it is clear that the judge also had well in mind the appellant's medical problems. He made specific reference to the medical evidence at para 49 of his determination including the respiratory problems arising from his injuries in Somalia upon which Ms Gardner placed some weight. It is noteworthy that the expert evidence was not that the appellant had any present significant impairment, in fact the medical evidence was that he had little by way of symptoms, and only that his injuries might catch up with him in a decade or two. The fact of the matter was that those injuries had not prevented his ability to work previously and there was no basis upon which the judge was required to infer that they would cause any "significant impairment" such that he would be unable to find work in Mogadishu.
20. Turning to Ms Gardner's third point, in respect of the 2016 UNHCR report, it is true that the judge made no reference to it and it post-dates the country guidance decision in MOJ and Others. Ms Gardner placed reliance upon what is said in para 12 of the 2016 report, in particular that: "Members of minority clans often lack vital protection and suffer pervasive discrimination." She also referred to the statement "ethnic Bantus, as well as some other minority clans, reportedly continue to be highly vulnerable to discrimination, severe poverty, exclusion and marginalisation ...". In substance, however that does not differ from the UNHCR evidence considered by the Upper Tribunal in MOJ and Others. So, at para [343] the Tribunal dealt with the UNHCR report in January 2014 and the disadvantage to minority clans in Mogadishu.

"We understand that to mean that while there was no guarantee that help would be available from clan members outside the close family network of a returnee, at least there is more likelihood of such a request being accommodated than if made to those unconnected by the bond of clan membership. That is, perhaps, wholly unsurprising. However, it should be noted that in the UNHCR January 2014 report the view was expressed that a returnee might be rather more confident of receiving help from his clan, if not a minority clan member:

'Persons belonging to minority clans ... remain at particular disadvantage in Mogadishu ... There remains a low sense of Somali social and ethical obligation to assist individuals from weak lineages and social groups. This stands in stark contrast to the powerful and non-negotiable obligation Somalis have to assist members of their own lineage'."

21. Plainly, therefore, in formulating the country guidance the Upper Tribunal had well in mind that minority clans continue to suffer disadvantage or discrimination. The Upper Tribunal, nevertheless, identified in the guidance the importance of the "economic boom" and that jobs (such as waiters, builders, drivers, retail assistants) created by that boom were "unlikely to be filled by the tiny minority that represent 'the elite'." (at [349]. See also at [352]). In my judgment, the 2016 Report adds nothing of significance that could lead to a different conclusion to that accepted in MOJ and Others.

22. Ms Gardner also relied upon para 19 of the 2016 UNHCR report, in particular:

*“Where the proposed area of relocation is an urban area where the applicant has no access to pre-identified accommodation and livelihood options, and where he/she cannot be reasonably expected to fall back on meaningful support networks, the applicant will likely find himself or herself in a situation comparable to that of urban IDPs. Under these circumstances, to assess the reasonableness of the IFA/IRA, adjudicators need to take into account the scale of internal displacement in the area of prospective relocation and the living conditions of IDPs in the location, as well as the fact that many IDPs are exposed to various human rights abuses, including forced evictions.”* (emphasis added)

23. In my judgment, what is said by the UNHCR in para 19 can be taken as no more than indicating, from its perspective, that access to accommodation and livelihood options (whether pre-arranged or not) is relevant as to whether relocation is reasonable or would, in effect, leave an individual living in an IDP camp which may make internal relocation not a viable option. The point is specifically made in the preceding paragraph, namely para 18, of the UNHCR report as follows:

*“For applicants for whom an IFA/IRA in Mogadishu has been deemed relevant, the reasonableness of the proposed IFA/IRA must be assessed. In this regard UNHCR considers that particular attention must be given to the extent to which the applicant can expect to receive genuine support from his or her immediate family or clan in the context of the general weakening of traditional protection mechanisms; availability of basic infrastructure and access to essential services in the proposed area of relocation; access to shelter in the proposed area of relocation; and the presence of livelihood opportunities.”* (emphasis in original)

24. What is said in para 19 must, in my judgment, be seen in the light of what is said in para 18 which no more than mirrors the approach of the Upper Tribunal in MOJ and Others to which the judge made reference and which he applied.
25. Consequently, I reject Ms Gardner’s submissions that the judge erred in reaching his finding that the appellant would be able to obtain employment and, therefore, support himself if returned to Mogadishu.
26. The effect of that may well be that any question of whether he would continue to receive financial support from his family abroad was immaterial to the judge’s finding that the appellant could reasonably and without undue hardship relocate to Mogadishu.
27. In any event, turning now to Ms Gardner’s fourth point, I do not accept Ms Gardner’s submission that the judge was not entitled to find that at least, to a limited extent, his family abroad could support him. The judge was clearly aware that his aunt in the US was no longer in a position to provide funds. The judge was also entitled to take into account that the appellant’s brother in the UK was working, despite the fact that he was in receipt of NASS support and other state benefits. Despite that, the judge was entitled to conclude that if the appellant needed some support his family would be in a position and, despite what they said, be willing to do so as they had done in the past and, perhaps it might be said, as any caring and compassionate family would seek to do. Ms Gardner took issue with the judge’s

statement that the sums needed would be “limited”. Of course, the need for any support had to be seen in the light of the fact that the judge was satisfied (and entitled to do so on the evidence) that the appellant would be in a position to obtain some employment in Mogadishu. Whilst the judge made no specific reference to any background evidence, the view he took about the costs’ implications of living in Mogadishu is entirely consistent with the level of poverty and standard of living referenced in the material (see, e.g. European Commission: “Humanitarian Aid and Civil Protection” (September 2016) at pp.78-81 FtT bundle) . Ms Gardner did not draw my attention to any material which would contradict what the judge said, namely that to survive in Mogadishu would require anything other than “limited” funds, particularly when it was likely that the appellant could seek employment.

28. In my judgment, applying MOJ and Others, the judge was entitled to find that the appellant’s circumstances on return to Mogadishu would not be unduly harsh and that it would be reasonable for him to relocate there. The judge gave adequate and sustainable reasons for his findings in paras 59-62 of his determination and his findings were not irrational.
29. For those reasons, the judge did not err in law in dismissing the appellant’s appeal on all grounds.
30. Before me, Ms Gardner submitted further evidence, including medical evidence concerning deterioration in the appellant’s mental health. Mr Mills acknowledged that this evidence might have had a material affect on any decision in respect of relocation if an error of law had been identified and the Tribunal was remaking the decision. However, since I am satisfied that the judge did not err in law in reaching his findings this new evidence, which was not before the judge, cannot be taken into account. Its relevance, if any, would be to any further submissions made to the Secretary of State following this appeal.

### Decision

31. For the above reasons, the judge did not err in law in dismissing the appellant’s appeal on all grounds.
32. Accordingly, the appellant’s appeal to the Upper Tribunal is dismissed.

Signed

A Grubb  
Judge of the Upper Tribunal

Date 25 July 2017