



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

Appeal Number: PA/12774/2016

THE IMMIGRATION ACTS

**Heard at: Manchester
On: 21st May 2018**

**Decision Promulgated
On 9 November 2018**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**SASS
(anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant:
& Co Solicitors**

Ms S. Khan, Counsel instructed by Polpitiya

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Somalia born in 1993. He pursues before this Tribunal his appeal against a decision to refuse him protection.

Anonymity Direction

2. This case concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Case History

3. The Appellant claimed asylum in the United Kingdom in May 2016 and asserted a well-founded fear of persecution in Somalia arising from his ethnicity and imputed political opinion: he claimed to be a member of the Ashraf minority who was at risk of recruitment by Al-Shabaab.
4. By a decision dated 3rd November 2016 the Secretary of State for the Home Department rejected the claim in its entirety, finding several reasons to disbelieve the Appellant’s account, including his claimed clan affiliation.
5. The Appellant appealed to the First-tier Tribunal. He and his father gave live evidence. The First-tier Tribunal (Judge Cohen) did not accept the Appellant’s evidence and in its determination dated the 24th April 2017 explained why. Nor was the Tribunal prepared to attach weight to the evidence of the Appellant’s father, since that evidence was in material respects in conflict with the Appellant’s own. The appeal was dismissed.
6. The Appellant sought, and on the 5th September 2017 was granted, permission to appeal to this Tribunal. The matter came before me on the 21st November 2017. Several grounds were pursued, and rejected: my ‘error of law’ decision is appended to this determination. I was however satisfied that the First-tier Tribunal had erred in its approach to the prevailing security and humanitarian situation in Somalia. The Appellant’s representative before the First-tier Tribunal had made detailed submissions urging the First-tier Tribunal to depart from the conclusions of the Upper Tribunal in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) on Article 15 of the Qualification Directive. She had referred the Tribunal to country background evidence which, it was submitted, was capable of demonstrating that the situation had deteriorated to the extent that MOJ should no longer

be followed. The First-tier Tribunal had failed to address any of this evidence or submissions, and had simply applied the *ratio* of MOJ. Given the nature of the submissions I was satisfied that this was an error, and that the Tribunal had been obliged to address evidence specifically relied upon before it. I therefore set that part of the decision aside and directed that the matter be relisted for further hearing.

7. There then followed a prolonged delay whilst consideration was given to whether this case was a suitable vehicle for new 'country guidance' to be issued. Neither party having expressed any enthusiasm for that idea, the matter was eventually listed before me in Manchester, with Ms Khan now appearing for the Appellant. The parties have my apologies for the delay that has followed thereafter.

The Matter in Issue

8. The central matter left in issue in this appeal is whether this passage from the headnote in MOJ holds true, for this Appellant, today:

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.

9. I am further asked to consider whether the Appellant qualifies for protection with reference to Article 15(b) of the Qualification Directive on the grounds that he would likely face destitution amounting to inhuman or degrading treatment. In addressing these questions I am obliged to consider the Appellant's individual characteristics against the available country background material. Before I do so I remind myself of the pertinent findings in MOJ.

The Findings in MOJ (Somalia)

10. The live evidence in MOJ was heard in February 2014 with an update in September of that year. The most recent written material before the Tribunal was dated January 2014. The judgment was handed down on the 24th September 2014.
11. As noted above, the central finding in MOJ was that there is no 'Article 15(c) risk' to ordinary civilians in Mogadishu. The Tribunal found there to have been a durable change in that al-Shabaab had completely withdrawn from the city. Although the statistics on civilian

death and injury were unreliable the Tribunal was satisfied that there had been a significant reduction in casualties since 2011, with al-Shabaab being limited to attacks on governmental and military targets. Ordinary civilians could limit the risk to their person by avoiding such potential targets, ie by not being outside government buildings. Inter-clan violence was no longer a feature of life in Mogadishu.

12. Individuals returning to Mogadishu from the West could be expected to turn to their family for support; if they have no immediate family they would be able to turn to their clan, given that the clans were now providing social support mechanisms for their members. There is an economic boom in Mogadishu and it would be for the individual facing return to explain why he would not be able to benefit from the resulting opportunities. Those with relatives abroad could receive remittances. For the individual with no immediate family, however, the Tribunal considered that the following matters would still be relevant to the individual's ability to re-establish himself in the city:

- 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 enables an appellant to secure financial support on return.

13. If, having considered all of those factors, it appeared that the individual in question would not be able to support himself, the likely outcome would be relocation to an IDP camp. The Tribunal held that conditions in such camps were likely to fall below acceptable humanitarian standards.

The Appellant

14. The facts accepted by the First-tier Tribunal are that the Appellant was born in Mogadishu in 1993. When he was 14 he was taken by his mother to Ethiopia, where they lived with his siblings until 2015. During the approximately eight years that the Appellant was in Ethiopia he was living in a refugee camp. The Appellant's own evidence is that he returned to Somalia in 2015. He stayed for approximately 2-3 months before travelling on to the United Kingdom via Kenya, Malaysia, Indonesia and China. The Tribunal rejected the Appellant's claim to be from a minority clan.

15. In his witness statement dated the 12th December 2016 the Appellant states that whilst in Somalia he lived with his cousin in Mogadishu. He claims to have now lost contact with this cousin, and that he has no living relatives in Somalia: this was rejected by the First-tier Tribunal. His father states that the Appellant has an elder brother still in Somalia. I have not been given any information about the Appellant's work or education history other than that provided by the Appellant when he was interviewed by an immigration officer in May 2016: he said that he had completed high school in 2010 (presumably in the refugee camp in Ethiopia) and that he has never had a job. Whilst the family were in Ethiopia they were supported by the Appellant's father, who was by then in the United Kingdom. Whilst in Somalia he was supported by his cousin. Whilst in Kenya (en route to the United Kingdom) he was supported by friends of his cousin. The same cousin paid for his trip to the United Kingdom.

The Country Background Evidence

16. Ms Khan helpfully produced a bundle of updated country background material in which relevant passages had been highlighted. She divided her submissions on the evidence into two sections: first, she addressed the security situation, then the general living conditions and the prospects for economic survival of a returnee.

Security Situation

17. Ms Khan identified three areas which she submitted to have undergone significant change since the Tribunal made its decision in MOJ.
18. The first related to the activities of al-Shabaab and related Islamic extremists. At the time of MOJ the group had been comprehensively routed from the city and had been driven back into the rural hinterland of southern Somalia. Its capacity to operate within the capital had been reduced to isolated attacks. Ms Khan pointed to recent evidence to the effect that the group has managed to continue and expand its activities:
- In May 2018 the UNSG¹ reported that a series of small improvised-device explosions and targeted assassinations in January 2018 had escalated in February when an estimated 40 people were killed and 20 injured in twin suicide bombings², for which al-

¹ United Nations, Report of the Secretary General on Somalia, 2nd May 2018

² In the documents before me figures cited for the deaths in this incident varied between 13 and 40. In submissions Mrs Aboni accepted that this was likely due to deaths amongst the

Shabaab claimed responsibility. They carried out three further attacks on the outskirts of the city in March. Since then the number of assassinations attributed to the group has increased.

- In March 2018 the 'monthly briefing' produced by UNISOM and OHCHR³ stated that in February 2018 there had been a 225% increase in al-Shabaab related abductions since January, and a 37% increase in casualties caused by al-Shabaab attacks.
- In January 2018 Human Right Watch⁴ reported as accurate UNSOM figures of 1,228 civilian fatalities for the year 2017, of which approximately half were attributed to al-Shabaab attacks. This figure appears to be for the whole country, but special mention is made of increased violence in Mogadishu, including the October 2017 truck bomb which killed at least 358 people in a market in central Mogadishu - the deadliest single attack in the country's history.
- The Home Office CPIN⁵ of July 2017 acknowledges that al-Shabaab appear to be increasingly capable of launching larger, more complex targeted attacks than in 2014-15 with vehicle born explosions occurring every few weeks in Mogadishu. Attacks have included suicide assaults on hotels used by the international community, drive-by shooting and assassinations. The CPIN cites the Danish Immigration Service report for 2017 which concludes that although al-Shabaab have no permanent presence in Mogadishu the city is under "constant threat" from the group which now has the 'reach' to launch attacks at will. Several sources reported to the DIS that al-Shabaab have infiltrated institutions such as Villa Somalia and the international airport. Although the overall number of attacks is smaller than previously, the attacks themselves are larger and more complex ie multi-person suicide attacks instead of a single hand grenade. In October 2016 the chair of the UN Security Council reported that between 2016 and 2017 al-Shabaab attacks took 120 lives including those of three parliamentarians and one government minister.

injured increasing as time went by.

³ United Nations Assistance Mission in Somalia (UNISOM) and Office of the United Nations High Commissioner for Human Rights (OHCHR) 'Human Rights and Protection in Somalia - Monthly Brief' 23rd March 2018

⁴ Human Rights Watch World Report: Somalia 18th January 2018

⁵ Home Office Country Policy and Information Note 'Somalia (South and Central) Fear of al-Shabaab' 17th July 2017

- The July 2017 CPIN cites various sources to the effect that al-Shabaab car bombs/suicide attacks killed 28 people in Mogadishu during January 2017, 34 people in February, 28 people in March, 6 in May and over 20 in June. Various other -greater -figures are cited for the overall death and injury rate but it is unclear whether these relate to the country as a whole. Landinfo estimate that during 2016 al-Shabaab killed 399 people in Mogadishu, with a further 186 fatalities being attributed to 'unknown' actors, 94 by government forces and 2 by clan militias.

19. The second, connected, area of evidence related to the general political volatility in Mogadishu. In MOJ the Tribunal had found political violence in the city to have largely abated, and to be confined to isolated attacks on specific targets. Ms Khan submitted that in the four years since that case was heard the stability evident in 2013-14 had been significantly undermined. In addition to the violence perpetrated by terrorist actors, the UNSG reported in May 2018 that a political stand-off between the Federal Parliament and Government had resulted in militiamen being deployed to the streets by both sides, with the crisis only being averted when the speaker of the House of the People resigning to avoid further escalation.

20. The third point was that recent evidence flatly contradicts the conclusion in MOJ that inter-clan violence is a thing of the past in Somalia. The 2017 CPIN cites research by the Danish Immigration Service which concluded that clan violence due to disputes over land, blood revenge or political control is "widespread". The DIS believe that many attacks attributed to al-Shabaab or similar groups are in fact clashes between different clan factions. The Director of one humanitarian agency interviewed believed that clan violence presents a greater risk to civilians than al-Shabaab attack. Amnesty International continue to report a high level of human rights abuses carried out by clan militias. In May 2018 the UNSG reported that inter-clan tensions were inflamed during the political crisis in March-April 2018 and that inter-clan fighting by members of the Somali security forces was reported in Mogadishu.

Socio-Economic Situation

21. The UNSG (May 2018) reported that the economy continued to grow, but not sufficiently to improve the lives of average Somalis. Drought has led to an increase in food prices. Famine was averted in 2017 by international donations but it remains a looming risk throughout the country. Although the business environment remained 'structurally weak' the UNSG considered that the private sector continued to have a key role in creating growth, in particular in

providing jobs for young people. A separate CPIN⁶ published in July 2017 reported on the humanitarian situation in central and southern Somalia. Although Ms Khan properly cautioned that the Tribunal was not bound by any policy statements therein, she relied on the document insofar as it provided a more recent snapshot of the economy in Mogadishu.

Discussion and Findings

22. The Appellant is by any measure an “ordinary civilian”. He has not shown himself to have any particular vulnerabilities. In MOJ the Tribunal held that such a person, absent specific risk, would face no real risk of serious harm.
23. The Appellant submits that the conclusions reached in MOJ no longer hold good, because the facts on the ground have changed.
24. I accept that the situation in Mogadishu has significantly worsened since the decision in MOJ. Ms Khan has shown that in respect of the three key indicators she identified, the Tribunal’s decision was, it can be said in retrospect, unduly optimistic. Al-Shabaab have not been defeated: in fact they are mounting large and complex attacks in the city, resulting in many hundreds of civilian deaths during 2017-2018. Political stability has not been achieved: tensions remain to the extent that a recent stand-off between parliamentarians resulted in armed men being deployed to the streets. Clan warfare has not ceased: all observers concur that it remains widespread, and that clan militias continue to perpetrate human rights abuses.
25. As for the socio-economic situation the most significant development since the Tribunal heard MOJ is that there was a drought in 2016-17 and that this has led to an increasing risk of famine throughout the country. I was not shown any evidence to indicate that the ‘economic boom’ in the private sector in Mogadishu has ended. As of May of this year the UNSG considered that it still has a key role to play in creating opportunities for young people in the city.
26. Applying those findings to the position of this Appellant I find as follows.
27. The Appellant has little experience of life in Mogadishu. Apart from a short stay of 2-3 months in 2015, he has only lived there has a child. He therefore has very limited ‘insider knowledge’ of how things work, of areas to avoid, or how best to go about getting work. He has no work experience and there is no evidence before me indicating

⁶Home Office Country Policy and Information Note ‘Somalia (South and Central) Security and Humanitarian Situation 27th July 2017

that he has any skill-set that might enhance his chances of finding a job.

28. What he does have, however, are close family members in the city. It is the Appellant's evidence that when he returned to Mogadishu in 2015 he lived with a cousin, who subsequently paid for his trip to Europe and facilitated his accommodation, with friends, whilst he was in Kenya. The First-tier Tribunal rejected the Appellant's evidence that he has subsequently lost touch with this cousin. The First-tier Tribunal further noted that the Appellant's father had given evidence to the effect that the Appellant has an elder brother in Mogadishu. Even if the father's evidence on this matter is discounted, it remains an undisturbed finding of fact that the Appellant has a cousin living in Mogadishu who has previously gone to considerable lengths to assist him. I am unable to conclude that this cousin would not do the same again, should the Appellant return there today. I note that the Appellant also has close family members living in this country: his father supported the family by way of remittances whilst they were in Ethiopia, and there is no credible evidence to suggest that he would not be able to do so again. I am therefore satisfied that there is no real risk of the Appellant being forced to reside in an IDP camp upon arrival in Mogadishu. He has - at least - a cousin with whom he can stay, and can look to his family in the United Kingdom for financial support. Although he has no work experience or qualifications to speak of, the appellant is a healthy young man and there is no reason why he would be unable, in time, to find employment and support himself.
29. The question remains: would the Appellant be at risk of harm by virtue of his presence as a civilian in Mogadishu?
30. I cannot be satisfied that the Appellant is at any risk of being caught up in clan violence. The evidence indicates that the clashes occurring are between rival militias, and there is nothing to suggest that he is in, or wishes to join, such a militia. He is not from a minority clan and the evidence does not establish that a single male member of a majority clan, personally uninvolved in clan disputes, would be at any risk from the militia of another clan. He has failed to demonstrate that he faced a real risk of harm during the period that he was last in Mogadishu. The fact that there is increasing political instability in Somalia generally is not capable of establishing that there is a risk of indiscriminate violence to this appellant. There continues to be a functioning government, and security service.
31. The real focus of Ms Khan's submissions was the undoubted rise in violence perpetrated by Islamic extremists. I note that the Appellant's claims to have been at risk from al-Shabaab in 2015 have been roundly rejected: I can find nothing in the evidence before me to suggest that he would be at risk of forced recruitment today. Nor

is there anything to suggest that the Appellant would be at risk from one of the targeted assassinations and abductions being carried out by the organisation. The country background material provided by the Appellant's representatives demonstrates however that al-Shabaab, and related Islamic extremists, have mounted several large-scale attacks in the past year, and that the true targets notwithstanding, these have resulted in mass civilian casualties. Various estimates are made of the number of dead and injured. UNSOM and HRW report that there were, countrywide, 1228 fatalities as a result of political violence in 2017, and of these killings, approximately half are attributed to al-Shabaab militants. This would certainly include the 358 people killed by the October 2017 market bomb in central Mogadishu, but for the purpose of this decision I am prepared to assume that all of the approximately 615 people murdered by al-Shabaab in 2017 were killed in the city. That is a rate, averaged, of approximately 50 per month, and this appears to be consistent with the evidence going into 2018 which indicates a similar level of fatalities.

32. I accept Ms Khan's submission that Article 15(c) is not to be measured by the sole determinant of deaths, but that other casualties, both physical and mental, must also be weighed in the balance. I accept that where terrorist organisations are mounting attacks such as truck bombs in public places, and planting IEDs, there is likely to be amongst the population at large an apprehension of violence and a fear of being caught up in it.

33. I have had regard to the figures of the dead and injured, and to the fact that the political situation in Somalia is not as stable as the Tribunal found it to be in 2014 when MOJ was heard. I bear in mind that contrary to the conclusions reached in that case, clan warfare is not a thing of the past in Somalia. I am however unable to conclude that the situation has deteriorated to the extent that Article 15(c) is engaged. That is because Mogadishu is a city of over 2.5 million inhabitants. Even if the fatality figures were to be multiplied by 5 to take account of the injured, that still means that on a monthly basis the percentage of those directly affected by violence would still only be 0.01% of the population. That is not a figure capable of establishing that the Appellant, by virtue simply of his presence in the city, would face a real risk of being subject to a threat to his life or person. It follows that the appeal must be dismissed.

Decision

34. The appeal is dismissed.

35. There is an order for anonymity.

Upper Tribunal Judge Bruce
20th September 2018