



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: RP/00067/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 August 2018

Decision & Reasons Promulgated  
On 03 September 2018

Before

LORD BECKETT SITTING AS AN UPPER TRIBUNAL JUDGE  
UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FYS  
(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

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

For the Respondent: Ms C Robinson, Counsel, instructed by Wilson Solicitors LLP

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

Unless and until a Tribunal or court directs otherwise, FYS 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.

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 22 February 2018 of First-tier Tribunal Judge Shamash which allowed the appeal of FYS against deportation on Article 3 and Article 8 ECHR grounds.
2. For the purposes of this decision we refer to FYS as the appellant and to the Secretary of State for the Home Department as the respondent, reflecting their positions before the First-tier Tribunal.
3. The appellant is a citizen of Somalia born in 1993. He came to the UK in 2001 at the age of 8 together with an aunt and his younger brother. It is undisputed that the appellant and his family are from the minority Shanshi clan, a sub-clan of the Benadiri clan.
4. The appellant's history in the UK is set out in detail in the decision of the First-tier Tribunal in paragraphs 8 to 9. We do not repeat that detail here but concur with the comment of the First-tier Tribunal that his upbringing was "shocking", his adult relatives failing to care for him to a significant degree such that he was taken into care after being found shoplifting in order to feed himself.
5. The appellant has a significant history of offending. The details of his criminal history are set out in the decision of the First-tier Tribunal in paragraphs 10 to 12 and, again, we do not repeat them in full here. It is sufficient to note that, prior to the index offence, the appellant amassed 28 convictions for 51 offences including criminal damage, assault, burglaries and possession of offensive weapons and robbery. On 29 July 2014 he was sentenced to 40 months' imprisonment for the index offence, two counts of robbery and one count of theft.
6. The respondent made a deportation order against the appellant on 24 May 2016 finding him to be a foreign criminal as defined in Section 32 of the UK Borders Act 2007 and that his deportation was conducive to the public good following Section 32(4) of that Act.
7. It is not in dispute that the appellant cannot benefit from the protection of the Refugee Convention or Humanitarian Protection as the First-tier Tribunal upheld the respondent's decision to certify those claims under Section 72 of the Nationality, Immigration and Asylum Act 2002.
8. However, the First-tier Tribunal found that the appellant would face inhuman or degrading treatment if returned to Somalia such that his appeal fell to be allowed under Article 3 of the ECHR. The First-tier Tribunal also found that paragraph 399A of the Immigration Rules was met where the appellant had spent more than half of his life in the UK lawfully, was socially and culturally integrated into the UK and would face very significant obstacles to his return to Somalia.
9. The respondent's first challenge was to the finding in paragraphs 57 to 60 of the First-Tier Tribunal decision that the applicant would face inhuman and degrading treatment if returned to Somalia. The respondent accepted that the First-Tier

Tribunal had identified correctly that the appellant had to come within the ratio of the Country Guidance case of **MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442** but maintained that the assessment of whether he did so disclosed error.

10. The First-tier Tribunal set out the relevant parts of the headnote from **MOJ** in paragraph 56 of the decision. For ease of reference we set out subparagraphs (ix) to (xii) here:

“(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 fund 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.”

11. The First-tier Tribunal made the following assessment:

- “57. I accept the appellant’s evidence that he has no connections in Mogadishu, it is clear that his whole family are now living in the United Kingdom although he remains estranged from his father. There was no evidence before me to indicate that the appellant has any knowledge of his culture. Social Service records support the appellant’s assertion that he has been in care with English families since the age of 13, having been left unsupervised by his aunt and having been badly treated by her. I find that the disruption in the appellant’s childhood and adolescence means that he has lost his ties with Somali culture and tradition. It was clear that his early experiences with his aunt have alienated him from his roots. In his oral evidence, the appellant appeared to me to be completely integrated into British culture and life. I accept that he speaks little or no Somali, cannot communicate with his own mother, cannot read or write in Somali and that he is completely unfamiliar with Somali culture. I accept that he does not consider himself to be a Muslim and has no knowledge of the Koran. In addition the trauma of his childhood and his adolescence, means that he has very little formal education and I accept his evidence that the only language that he speaks is English and that all of his cultural references are western. The appellant has lived in English families since the age of 12 and he is currently living with an English family. I have read the references from his former foster mother and from his friends. In particular, the statement of his friend [CJ] whose mother the appellant is living (sic) and who attests to the fact that he and his friends have always seen the appellant as English. I have also read the statement of [AB] who acted as the appellant’s foster carer (albeit it appears informally) over his teenage years. She describes some of his difficulties (sic) the appellant encountered but also the fact that her family are close to the appellant. In summary, I accept the appellant’s evidence that he knows nothing of life in Somalia, of the culture, of the language and nothing about his Muslim faith.
58. In addition the appellant has mental health issues which are set out in the report of Dr Boucher, and which will make him more vulnerable.
59. Having looked at the decision in **MOJ** and the more recent report of the Danish Demining Group prepared by Ken Menkhaus, I am satisfied that the appellant falls into the most vulnerable category of possible returnees. He is a young man with mental health vulnerabilities, little formal education and no family support. I accept the evidence of Dr Hammond that he is unlikely to receive support from his clan, bearing in mind that the Benadiri clan are a minority clan, who have lost their power. He falls squarely into the risk categories identified in **MOJ**. The risks to him are potentially greater as a non-believer and a young male. The increased violence from Al Shabab makes his Article 3 claim stronger.
60. The passage of time, the sheer volume of IDPs, the increase in violence and the recent drought have all impacted on conditions in camps. The situation is more severe than in 2014. The camps have become more and more corrupt and as the returnees increase in number, the conditions in the camps deteriorate as illustrated in Ken Menkhaus’ report. The drought has further exacerbated the situation. This means that far from being able to benefit from the ‘economic boom’ in Mogadishu, the appellant is likely to find himself in a camp with no chance of employment, no access to food and healthcare and vulnerable to gang violence as a westernised young male. He has no family to return to and no support network. As a result of

the facts stated above, I find that the situation which the appellant would face were he returned to Mogadishu would fall below acceptable humanitarian standards and would engage Article 3 of the ECHR. Consequently, the appellant's appeal is allowed on Article 3 grounds."

12. The respondent objects to these findings, submitting that the judge did not provide "clear" reasons for finding that the appellant no longer spoke Somali given that he spent the first seven years' of his life in Somalia and could be expected to re-familiarise himself with the language. The grounds also maintained that the decision failed to assess whether the appellant could expect support from his family in the UK to adjust to life in Somalia. The decision did not indicate clearly what weight was placed on the appellant's mental health, the psychology report being unsupported by current GP records or details of any ongoing medication. The decision was also in error for failing to take into account the appellant had transferable skills, having taken a bricklaying course in detention and having been educated in the UK. The grounds also maintained that the First-tier Tribunal failed to consider the assistance that would be available to the appellant from the Facilitated Returns Scheme which would provide the appellant up to £1,500.
13. The grounds also objected to the finding in paragraphs 59 and 60 on two recent country reports on Somalia, maintaining that insufficient reasons were provided as to how these reports could be capable of distinguishing **MOJ**.
14. It is our conclusion that the challenge to the Article 3 findings of the First-tier Tribunal are, taken at their highest, disagreement and not capable of showing error on a point of law.
15. The undisputed evidence before the First-Tier Tribunal was that the appellant had no relatives in Mogadishu, had been absent from Somalia since the age of 8, would not be able to call on his minority clan members to support him, had a highly disrupted upbringing in the UK, living in various care settings after significant neglect by family members, had limited education as a result, had not worked in the UK and had limited relationships with his Somali relatives, other than his younger brother.
16. These factors appeared to us to make it eminently open to the First-Tier Tribunal to find that this appellant was likely to come within the risk category identified in paragraphs (xi) and (xii) of the head note of **MOJ**. Given the evidence on the amount of time that he has been in the UK, the mistreatment he experienced from his Somali relatives and his having lived from the age of thirteen in an English environment, the conclusion that he no longer speaks or understands Somali or follows the Muslim faith and is estranged from his Somali culture was rational. This aspect of the appellant's claim was supported by other witnesses, for example Mr [J] and former foster carers as well as Social Services records (see paragraph 57). Nothing in the evidence before the First-Tier Tribunal suggested other than that he has limited relationships with his Somali relatives apart from his younger brother who was not in a position to provide much financial support from his pizza delivery work. It did not appear to us that the family circumstances here made it at all realistic that relatives would return to Somalia with the appellant in order to assist him to re-establish himself there, as suggested in the grounds. We did not find the fact of the

appellant having taken a brick-laying course whilst in detention was something that could be material in assisting him to support himself in Somalia in the context of his lack of clan or family support and any work experience. The Facilitated Returns Scheme could not provide the “ongoing financial support” identified as necessary in MOJ for someone as isolated as this appellant.

17. The grounds do not make a specific challenge to the contents of the psychology report of Dr Boucher as being inaccurate or unreliable or suggest that the summary of the report in paragraphs 26 to 30 of the First-Tier Tribunal’s decision was inaccurate. The report was relatively recent, prepared in 2017, and there was no requirement for it to be supported by GP records in order to be afforded weight. The First-tier Tribunal does not suggest that the appellant’s mental health in itself showed an Article 3 risk but only identifies it in paragraph 58 as something which would make the appellant “more vulnerable”. That is a finding which was open to the judge on the material before her. It was also our view that even without mental health being a factor, the other aspects of the appellant’s profile identified by the First-Tier Tribunal still brought him within the risk categories set out in MOJ.
18. In paragraph 59 of the decision, the First-tier Tribunal set out a clear finding that the appellant came within the ratio of MOJ. For the reasons set out above, we found that to be a sustainable finding. It is not material, therefore, that the decision goes on to comment on the more recent evidence of Mr Menkhaus and Dr Hammond on deteriorating conditions in Mogadishu, showing a heightened risk of Article 3 mistreatment beyond that identified in MOJ.
19. For these reasons we find that the decision of the First-tier Tribunal that the appellant’s appeal succeeded under Article 3 ECHR does not disclose legal error.
20. Whilst we see some force in the respondent’s argument that the First-tier Tribunal did not assess whether the appellant’s extensive criminal behaviour was capable of preventing him from having socially and culturally integrated into the UK, as we have found that the Article 3 ECHR claim must succeed, any error in the Article 8 ECHR decision cannot lead to a materially different outcome of the appeal and we therefore take this ground no further.

### Notice of Decision

The decision of the First-tier Tribunal does not disclose a material error on a point of law and shall stand.

Signed: 

Date: 22 August 2018

Upper Tribunal Judge Pitt